

**In Memory****of****Alfreda Head**

Senator Barrientos offered the following resolution:

**(Senate Resolution 33)**

WHEREAS, With the death of Alfreda Head on November 8, 1989, the City of Austin lost one of its most esteemed residents; and

WHEREAS, Born in Douglas, West Virginia, on February 7, 1926, she was the daughter of Peter and Helen Snyder; and

WHEREAS, Her January 12, 1945, marriage to J. Manley Head was a strong and enduring union built on mutual respect and love; and

WHEREAS, First and foremost a caring wife and mother, her special talents enabled her to establish a happy home life for her husband and children; and

WHEREAS, Ever gracious and charming, Mrs. Head endeared herself to all who knew her; and

WHEREAS, A committed Christian and member of the University Avenue Church of Christ, she lived her beliefs every day of her life in thought, word, and action; and

WHEREAS, Compassionate and concerned with the welfare of her fellowman, she never turned her back on those in need; and

WHEREAS, The memory of this beloved gentlewoman will remain forever embedded in the hearts of her family and friends; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 71st Legislature, 2nd Called Session, hereby extend sincere condolences to the members of her family: her husband, J. Manley Head; her sons, Ray T. Head and Randolph J. Head; her daughter, Helen Head Stokes and Hayley Head Glasser; her stepson, J. Manley Head, Jr.; her stepdaughter, Sharon Struhall; and her seven grandchildren and two great-grandchildren; and, be it further

RESOLVED, That copies of this Resolution be prepared for the members of her family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Alfreda Head.

The resolution was read.

On motion of Senator Leedom and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Barrientos and by unanimous consent, the resolution was considered immediately and was adopted by a rising vote of the Senate.

**FIRST DAY****(Continued)****(Monday, November 20, 1989)****AFTER RECESS**

The Senate met at 11:00 a.m. and was called to order by the President.

**RESOLUTION SIGNED**

The President announced the signing in the presence of the Senate the following enrolled resolution:

**H.C.R. 1****GUEST PRESENTED**

Senator Truan was recognized and presented Dr. John McCollough of Corpus Christi.

The Senate welcomed Dr. McCollough, a participant in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, and expressed appreciation for his contributions today.

**HONORARY PAGES INTRODUCED**

Senator Sims was recognized to introduce Honorary Pages serving the Senate today: Joe Daniel Horton, Jeffrey Barret Gould and Justin Bradley Gould, nephews of Lolly Garcia of the Senate Personnel Office.

These young people were welcomed by the Senate and received the appreciation of the Senate for their services today.

**SENATE BILL 1 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1**, Relating to the reform of the workers' compensation system; to the creation, powers and duties of the Texas Workers' Compensation Commission; and to work safety; establishing the Texas Workers' Compensation Research Center; making appropriations; providing criminal and administrative penalties; and providing for taxes and fees.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **S.B. 1** as follows:

(1) Amend SECTION 1.03(19), by adding a period after the word "practice", and by striking the remaining language in the sentence. (page 5, lines 2-3)

(2) Amend SECTION 1.03(21), by inserting the following between "entity" and the period:

"that self-insures, either individually or collectively" (page 6, line 1)

(3) Amend SECTION 1.03(27), by striking the word "an" and by inserting the words, "a compensable" between the words "from" and "injury". (page 7, line 6)

(4) Amend SECTION 1.03(32)(c), by adding the words, "mental or" between the words "of" and "physical". (page 8, line 23)

(5) Amend SECTION 2.01(a), by striking the reference to Section "15.13" and replacing it with Section "15.12". (page 12, line 24)

(6) Amend SECTION 2.04, by striking "hiring" and inserting "employment" between the words "the" and "of", and by inserting "affirmative" between the words "the" and "votes." (page 14, line 20)

(7) Amend SECTION 2.09(1), by inserting "Except for subsection (i)," at the beginning of the sentence. (page 17, line 25)

(8) Delete SECTION 2.23(c) in its entirety. (page 24, line 10)

(9) Amend SECTION 2.33(a), by inserting the word "insurance" between the words "compensation" and "coverage". (page 28, line 9)

(10) Amend SECTION 2.34(a), by adding the phrase "pursuant to Section 2.33" following the word "employer". (page 28, line 25)

(11) Amend SECTION 2.39 by striking the words, "Unless a fee is specifically established, the" and by inserting the word "The" before the word "commission". (page 30, lines 21-22)

(12) Amend SECTION 2.51(b)(2), by striking the word "review" and inserting the word "monitor". (page 31, line 10)

(13) Amend SECTION 2.51(f), by replacing the word "the" between the words "file" and "report" with the word "a". (page 31, line 18)

(14) Amend SECTION 3.05(e), by inserting the words "and the commission" between the words "carrier" and "within". (page 36, line 27)

(15) Amend SECTION 3.06 by striking the words "is a sole proprietor with" and inserting the word "has" before "no". (page 38, line 8)

(16) Amend SECTION 3.08(a), by deleting the phrase "; WAIVER OF RIGHT TO COMPENSATION VOID" from the title of the SECTION. (page 43, lines 8-9)

(17) Amend SECTION 3.08(a), by adding the words "and scope" between the words "course" and "of". Amend SECTION 3.08(c) similarly, by adding the words "and scope" between the words "course" and "of". (page 43, line 14 and page 44, line 5)

(18) Amend SECTION 3.13, by striking the word "employees" in the first sentence and replacing it with "employee". (page 45, line 19)

(19) Amend SECTION 3.14, by striking "(a)" following the word "COVERAGE." Delete the word "beneficiaries" between the words "legal" and "is" and insert the word "beneficiary". Strike Subsection (b) in its entirety. (page 45, lines 22 and 25; page 46, lines 4-5)

(20) Amend SECTION 3.23(b), by adding "or 3.06" between "3.05" and the word "of". (page 49, line 3)

(21) Amend SECTION 3.24, Subsections (a) and (d), by adding the word "insurance" between the words "compensation" and "coverage". (page 50, lines 14 and 24)

(22) Amend SECTION 3.26(a), by striking "Section 3.24(d)" and substituting "Section 3.24". (page 51, line 26)

(23) Amend SECTION 3.41(b)(4), by striking the word "or" between "10.02" and "10.03", and inserting ", or 10.05" between "10.03" and "of". (page 55, line 15)

(24) Amend SECTION 4.06(e), by striking "and payment of wages in compliance with Section 5.05 of this Act," and inserting, "in compliance with Section 5.05 of this Act and payment of wages in compliance with this section,". (page 61, lines 2-3)

(25) Amend SECTION 4.08(2), by inserting the following after the word "support":  
"which shall be paid as required by an order withholding income under Section 14.13, Family Code, or a writ of withholding, under Section 14.15, Family Code" (page 61, line 19)

(26) Amend SECTION 4.09(b), by striking "4.27(h)(2)" and by inserting "4.28". (page 62, line 2)

(27) Amend SECTION 4.12, by adding a new subsection (c), to read as follows:  
"(c) The minimum weekly income benefit in effect on the date of injury is applicable for the entire period during which the income benefits are payable." (page 67, line 20)

(28) Amend SECTION 4.13(b), by adding the words "but not paid" between the words "Accrued" and "compensation". (page 67, line 24)

(29) Amend SECTION 4.23(c), by adding the following after the word “benefit” at the end of the sentence:

“under Section 4.11 of this Act, or to be less than the minimum weekly benefit under Section 4.12 of this Act”. (page 70, line 26)

(30) Amend SECTION 4.24 by striking the word “implement” in this last sentence and inserting the word “adopt”. (page 71, line 17)

(31) Amend SECTION 4.26(b), by adding the following after the word “Act” and before the period:

“or to be less than the minimum weekly benefit under Section 4.12 of this Act”. (page 72, line 14)

(32) Amend SECTION 4.26(g), (page 73, lines 27-28) by striking “have the award of” and inserting “adopt” and by striking “income benefits on the report of” and inserting “rating made by”.

On page 74, line 2, strike “award of” and “income benefits” and insert “rating” between “impairment” and “on”.

On page 74, line 4, strike the word “use” and insert “adopt” between “shall” and “the” and strike “report” and insert “impairment rating” between “the” and “of”.

(33) Amend SECTION 4.28(i), by striking the second sentence, which reads, “For the purposes of calculating supplemental income benefits, 80 percent of the employee’s average weekly wage and the total wages the employee is earning are compared monthly”, in its entirety. (page 77, line 5)

(34) Amend SECTION 4.28(j), by striking the word “benefits” between the words “weekly” and “under” and inserting “benefit”. Add the following after the word “Act” and before the period:

“or to be less than the minimum weekly benefit under Section 4.12 of this Act”. (page 77, lines 17-18)

(35) Amend SECTION 4.33(c), by striking “be based on” and inserting “adopt” between the words “must” and “an”. (page 80, line 3)

(36) Amend SECTION 4.42(d), by striking the word “a” between the words “if” and “child” and inserting “an eligible”. (page 81, line 14)

(37) Amend SECTION 4.62(a), by adding the word “injured” between the words “the” and “employee”. (page 87, line 5)

(38) Amend SECTION 4.65(b), by striking “of Section 4.62” and substituting “of Section 4.62 or 4.63”. (page 88, line 25)

(39) Amend SECTION 4.70 by adding a new Subsection (c) to read as follows:

“(c) An insurance carrier may not require an employee to use pharmaceutical services designated by the insurance carrier.” (page 91, line 10)

(40) Amend SECTION 5.06, by inserting “or 5.07” between “5.01” and “of”. (page 94, line 12)

(41) Amend SECTION 6.41(b), by adding “on which review is sought” after the word “hearing” at the end of the sentence. (page 110, line 27)

(42) Amend SECTION 6.62(f)(3), by striking the words “is so material that it”. (page 115, line 5)

(43) Amend SECTION 6.62(g), by inserting the phrase “or the State Board of Insurance” into the first sentence between the words “commission” and “shall”. (page 115, line 8)

(44) Delete SECTION 7.02(j) and insert a new Section 7.02(j) to read as follows:

“(j) In accordance with Section 24, Occupational Safety and Health Act of 1970 (29 U.S.C. Section 673), the division shall collect information relating to occupational safety as required by federal laws, rules or agreements.” (page 119, line 4)

(45) Amend SECTION 7.03(a), by striking “the Texas Department of Labor and Standards,”. (page 119, lines 14-15)

(46) Amend SECTION 7.03(c), by striking “, except the identity of the employee”. Add a new Subsection (d) to read as follows:

“(d) The identity of the employee is confidential and shall not be disclosed as a part of the job safety information system.” (page 119, line 27 and page 120, line 16)

(47) Add a new SECTION 7.10 to read as follows:

“SECTION 7.10: POLICIES FOR ELIMINATION OF DRUGS IN THE WORKPLACE. (a) Each employer who has 15 or more employees and who maintains workers’ compensation insurance coverage shall adopt a policy designed to eliminate drug abuse and its effects in the workplace. The employer shall distribute to each employee a written copy of the policy.

(b) The commission shall enforce this requirement and may adopt rules for that purpose.” (page 127, line 6)

(48) Amend SECTION 7.21(d)(1) by striking “September 1, 1989” and substituting “September 1, 1990”. (page 128, line 8)

(49) Amend SECTION 8.01(e), by striking the first sentence in its entirety and by substituting the following:

“(e) The division shall order a refund of all charges paid to a health care provider in excess of those allowed by the medical policies or fee guidelines.” (page 132, line 14)

(50) Amend SECTION 8.23(d), by adding the following after the word “chair” and before the period:

“or a meeting may be called by a majority of the committee.” (page 137, line 27)

(51) Amend SECTION 12.01 by inserting “with intent” between “if the person,” and “to obtain”. (page 161, line 20)

(52) Amend SECTION 13.37, amending Art. 6674s, V.T.C.S., Sec. 7(a)(4), by striking “4.02” and inserting “4.01(b)”. (page 186, line 13)

(53) Amend SECTION 13.39, amending Art. 8309b, V.T.C.S., Sec. 7(a)(4), by striking “4.02” and inserting “4.01(b)”. Amend Sec. 7(a)(5), by inserting “and 10.01” after “through 7.09”. (page 190, lines 13-15)

(54) Amend SECTION 13.40, amending Art. 8309d, V.T.C.S., Sec. 7(a)(4), by striking “4.02” and inserting “4.01(b)”. Amend Sec. 7(a)(5), by inserting “and 10.01” after “through 7.09”. (page 193, line 27 and page 194, line 1)

(55) Delete SECTIONS 13.44 and 13.45 in their entirety, and renumber subsequent SECTIONS appropriately. (page 197, line 11 and line 26)

(56) Amend new SECTION 13.45, amending Art. 8309g, V.T.C.S., Sec. 15(a)(4), by striking “4.02” and by inserting “4.01(b)”. (page 198, line 27)

(57) Amend new SECTION 13.48, Art. 8309h, V.T.C.S., Sec. 3(a)(4), by striking “4.02” and by inserting “4.01(b)”. (page 202, line 15)

(58) Amend SECTION 14.01 by striking Subsection (15) and by renumbering subsequent subsections appropriately. (page 206, line 13)

(59) Amend SECTION 15.02(c) by deleting “Section 7(c) and” between the words “with” and “Section 24” and by deleting “656(c) and” between “(29 U.S.C.” and “673)”. (page 207, lines 16-17)

(60) Amend SECTION 15.09 by adding the following as the last sentence of the added language:

“Court costs and investigative costs recovered by the Office of the Attorney General are reappropriated to the Office of the Attorney General during the biennium of receipt to be used for court costs, expert witness fees, and other direct legal expenses related to litigation.” (page 211, line 12)

(61) Amend SECTION 15.10(a) by deleting “repealed.” and replacing it with the following:

“hereby repealed and replaced with the amounts appropriated in subsection (b) of this section. Expenditures and encumbrances from Article I (pages I-158 through

I-162), Chapter 1263, Acts of the 71st Legislature, Regular Session, 1989, should be considered as expenditures and encumbrances from the amounts appropriated in subsection (b) of this section." (page 211, line 18)

(62) Amend SECTION 15.10(b), (page 213, between lines 20 and 21) by inserting "Assistant Executive Director" with a salary of "\$2,500". (page 213, line 21)

(63) Amend SECTION 15.10(b), Rider 5, (page 215, line 25) by striking "Comptroller's office" and inserting "Suspense Fund 900". (page 215, line 25)

(64) Amend SECTION 15.10(b) by adding the following rider language after existing Rider 9: (page 217, line 20) "10. APPROPRIATION FOR AWARDS EVALUATION. The amount of \$291,099 is hereby appropriated to the Texas Workers' Compensation Commission for Awards Evaluation for Fiscal Year 1990."

(65) Amend SECTION 15.12(b), by adding "except Section 2.14" between "2" and "and". (page 218, line 2)

The amendment was read.

Question - Shall the amendment be adopted?

#### POINT OF ORDER

Senator Parmer submitted the following point of order:

Mr. President, I would like to raise a point of order against further consideration of S.B. 1 (or S.B. 2) on the grounds that it violates Article 3, Section 35, Subsection (a) of the Texas Constitution.

Article 3, Section 35, Subsection (a) of the Texas Constitution provides that "No bill, (except general appropriations bills, which may embrace the various subjects and accounts, for an account of which moneys are appropriated) shall contain more than one subject." (Emphasis added)

A bill with an appropriation cannot amend general law because that constitutes two separate subjects: (1) workers compensation reform and (2) an appropriation for the Texas Workers' Compensation Commission. See Moore v. Sheppard, 192 S.W.2d 559, 1946, which provides that the appropriating of funds to be paid from the treasury is a "subject" within this section. The appropriations are on pp. 211-217 of S.B. 1 and p. 68 of S.B. 2.

The President should rule on this question of constitutionality because it is a question of procedure, in contrast to substance. The Rules of the Senate provide:

"The President of the Senate may refuse to rule on a point of order relating to the constitutionality of the substance of a proposition or on one that does not relate to any question of procedure or practice." (Senate Rules, Editorial Note to Rule 1.01, p. 1).

"The President of the Senate is required by the rules of the Senate to decide questions of order, but he is not required to rule on the constitutionality of the substance or content of any proposed law, resolution or amendment. He usually decides questions as to the constitutionality of a certain procedure or as to the Senate's constitutional jurisdiction, but he usually submits to the Senate for its decision questions as to the constitutionality of the substances or content of any proposal." (Senate Rules, Editorial Note to Rule 6.12, p. 29)

It could be argued that an appropriation is "incidental" to the bill, and that therefore the bill has only one subject. However, if the bill is sent to the Comptroller for certification subject to the provisions of Art. 3, Sec. 49a, requiring verification that the State will have enough money to pay for the appropriation, the appropriation in the bill is not an incidental appropriation. It is expected that this bill will be sent to the Comptroller for certification because it appropriates over \$39

million in new money for the current biennium; therefore its appropriation is not incidental.

Mr. President, I respectfully request that you sustain the point of order that this bill violates Article 3, Section 35, Subsection (a) of the Texas Constitution.

#### POINT OF ORDER

Senator Parmer submitted the following point of order:

Mr. President, I would like to raise a point of order against further consideration of S.B. 1 (or S.B. 2) on the grounds that it violates Article 3, Section 33 of the Texas Constitution.

Article 3, Section 33 of the Texas Constitution provides that "All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills." (Emphasis added)

Both S.B. 1 and S.B. 2 state in their captions "and providing for taxes and fees." S.B. 1 in Section 2.22 provides for an increase in the maintenance tax from .7 percent to a level of no more than two percent of gross workers' compensation insurance premiums. S.B. 1 does this by repealing the current maintenance tax provision, Art. 8306, Sec. 28 (in Section 14.01(7) of the bill), and adds the new tax maximum in Sec. 2.22. S.B. 2 also has taxes in 3.13 and 5.06.

The Senate Rules provide several examples of precedent where points of order have been sustained on these matters (p. 78):

(1) "A measure which merely relates to revenue and is not a 'revenue-raising measure' may originate in the Senate";

HOWEVER,

(2) "A Senate bill amending a revenue-raising law is a revenue-raising measure itself and cannot originate in the Senate." (Emphasis added)

The President should rule on this question of constitutionality because it is a question of procedure, in contrast to substance. The Rules of the Senate provide:

"The President of the Senate may refuse to rule on a point of order relating to the constitutionality of the substance of a proposition or on one that does not relate to any question of procedure or practice." (Senate Rules, Editorial Note to Rule 1.01, p. 1)

"The President of the Senate is required by the rules of the Senate to decide questions of order, but he is not required to rule on the constitutionality of the substance or content of any proposed law, resolution, or amendment. He usually decides questions as to the constitutionality of a certain procedure or as to the Senate's constitutional jurisdiction, but he usually submits to the Senate for its decision questions as to the constitutionality of the substances or content of any proposal." (Senate Rules, Editorial Note to Rule 6.12, p. 29)

Mr. President, I respectfully request that you sustain the point of order that the bill violates Article 3, Section 33 of the Texas Constitution.

#### MESSAGE FROM THE HOUSE

House Chamber  
November 20, 1989

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 2, Commending members of the Channel Industries Mutual Aid Organization.

H.C.R. 5, Commending former State Representative Stan Schlueter.

H.C.R. 6, Honoring Susan Pitman.

H.C.R. 7, Honoring Rita Carlson.

H.C.R. 8, Honoring Bebe Lising.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

#### **POINTS OF ORDER WITHDRAWN**

After a discussion at the Rostrum, Senator Parmer temporarily withdrew his points of order.

#### **SENATE BILL 1 ON SECOND READING**

The Senate resumed consideration of S.B. 1 on its second reading and passage to engrossment with an amendment by Senator Montford pending.

Question - Shall Floor Amendment No. 1 be adopted?

Floor Amendment No. 1 was adopted viva voce vote.

#### **POINTS OF ORDER RENEWED**

Senator Parmer renewed his points of order against further consideration of S.B. 1.

#### **RECESS**

On motion of Senator Brooks, the Senate at 11:14 a.m. took recess until 3:00 p.m. today.

#### **AFTER RECESS**

The Senate met at 3:00 p.m. and was called to order by the President.

#### **MESSAGE FROM THE HOUSE**

House Chamber  
November 20, 1989

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 10, In memory of Hobart Gaines.

H.C.R. 18, Commending Austin Research Laboratories.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives



**RULINGS ON POINTS OF ORDER**

The President made the following rulings on the points of order by Senator Parmer:

Senator Parmer raises a point of order against further consideration of **S.B. 1** in that it violates Article 3, Section 35 of the Constitution, which provides that no bill shall contain more than one subject.

Senator Parmer has submitted judicial authority for the proposition that an appropriation is a subject within the meaning of the Constitution. The case provided by Senator Parmer involved a general appropriations bill and held that appropriations constituted the subject of that bill and that all matters not involving appropriations constituted different subjects. Moore v. Sheppard, 192 S.W.2d 559.

The Chair is of the opinion that the authority cited does not resolve the question presented in the point of order.

The Chair is unable to find precedent, and has not been directed to any precedent, for the proposition that the legislature may not make an appropriation in a bill that also enacts, amends or repeals general law. In fact, several such bills have been considered under other constitutional challenges by the courts and the attorney general and been found constitutional. In Atkins v. State Highway Department, 201 S.W. 226, for example, the court considered the legislation that created the State Highway Department and prescribed its powers and duties. The same bill prescribed fees, established the State Highway Fund, and appropriated the funds to the commission. The court, although not specifically faced with an Article 3, Section 35, challenge, held "(w)e think the legislature had the power to make the appropriation, here involved, in the manner that it did." 201 S.W. 226, 232. Based on that holding, and quoting an 1898 case for the proposition that "(i)t is clear that an appropriation need not be made in the general appropriations bill," the attorney general upheld **H.B. 420** of the 51st Legislature, which provided for the regulation of the sale and use of herbicides and appropriated the fees levied under the bill. Op. Tex. Att'y Gen. No. V-887 (1949). These and other precedents, coupled with the absence of any precedent to the contrary, make it clear that the legislature may properly reform workers' compensation and make appropriations to the new commission in the same bill without violating the Constitution.

It is a long standing precedent in this House, consistent with the interpretation of the unity of subject rule by the courts of this State, that a bill will not be held to violate the one-subject rule if every provision of the bill relates to a single unifying theme and in which its provisions related directly or indirectly to the same general subject and have mutual connection. Soweders v. M.W. Kellogg Co., 663 S.W.2d 644; Babcock v. State, 668 S.W.2d 857. The Chair has reviewed **S.B. 1** and determined that the subject of the bill is the reform of the workers' compensation system. The Chair is further of the opinion that every provision of the Act is directly related to this subject, including specifically those provisions related to the creation, powers and duties of the new commission, those providing for the creation and operation of the research center, and those providing for the funding of the commission and other activities related to the enforcement of the law.

Other cases not dealing with general appropriations bills have held that any matter relating directly or indirectly to the main subject of the bill, having a mutual connection and being necessary to the accomplishment of the main object does not constitute a separate subject. Ex Parte White, 198 S.W. 583; Dodge v. Youngblood, 202 S.W. 116; Bryant v. State, 457 S.W.2d 72; Jessen Associates, Inc. v. Bullock, 531 S.W.2d 593.

The point of order is, therefore, respectfully overruled.

Senator Parmer raises an additional point of order against further consideration of S.B. 1 in that it violates Article 3, Section 33 of the Constitution, which provides that all bills for raising revenue shall originate in the House of Representatives. Although S.B. 1 clearly does raise revenue, the Chair is of the opinion that it is not a bill for raising revenue as that concept is expressed in the Constitution, and that the revenue-raising features of the bill are incidental to the primary purposes of the bill previously mentioned.

There is limited judicial authority on this point. It has been held, however, that Article 3, Section 33 applies only to a bill which has the raising of revenue as its main purpose and that a bill which raises revenue as a necessary ingredient to accomplishment of a different primary purpose is not a bill for raising revenue. Yeary v. Youngblood, 384 S.W.2d 376.

The bill must be examined as a whole to determine whether the revenue producing feature is central to the purpose of the legislation or is merely incidental to a different, non-revenue producing purpose. Only if the production of revenue is central does Section 33 apply. Stuard v. Thompson, 251 S.W. 227.

The Chair has consulted the Senate precedent cited by Senator Parmer and has reviewed the bill at issue in that precedent. The bill would have amended a previously enacted law providing for an occupation tax on peddlers. According to its title, the bill at issue would have prohibited imposition of such a tax on persons selling farm products. The Chair is of the opinion that the precedent cited is not in point.

The point of order is, therefore, respectfully overruled.

#### **SENATE BILL 1 ON SECOND READING**

The Senate resumed consideration of S.B. 1 on its second reading and passage to engrossment.

Question - Shall S.B. 1 as amended be passed to engrossment?

#### **CONSIDERATION OF AMENDMENTS TO SENATE BILL 1**

On motion of Senator Parker and by unanimous consent, no additional amendments to Article I of S.B. 1 would be considered until all other amendments have been considered and acted upon.

#### **FLOOR PRIVILEGES GRANTED**

On motion of Senator Montford and by unanimous consent, floor privileges were granted to Bob Duncan, General Counsel for the Committee on Economic Development, in order that he might sit at Senator Montford's desk during the consideration of S.B. 1.

On motion of Senator Parker and by unanimous consent, floor privileges were granted to James Field, Administrative Assistant to Senator Parker, in order that he might sit at Senator Parker's desk during consideration of S.B. 1.

Senator Glasgow offered the following amendment to the bill:

#### **Floor Amendment No. 2**

Amend S.B. 1 as follows:

(1) On page 31, between lines 6 and 7, amend SECTION 2.51 by adding a new subsection (b) to read as follows:

“(b) The Texas Legislative Council shall assign at least one staff person to assist the committee and shall provide other support as necessary.”

(2) Reletter subsequent subsections as appropriate.

The amendment was read and was adopted viva voce vote.

Senator Glasgow offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend S.B. 1 as follows:

On page 31, line 17, amend Section 2.51(e) by inserting “, with emphasis on the availability and cost of supplemental income benefits” between “Act” and the period.

The amendment was read and was adopted viva voce vote.

Senator Krier offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend S.B. 1, Section 3.05, on page 35, line 17, after the word “contract” by adding the following language:

“An owner-operator is an independent contractor.”

KRIER  
BROOKS

The amendment was read.

Senator Krier offered the following substitute amendment to Floor Amendment No. 4:

**Floor Amendment No. 5**

Amend Section 3.05 of S.B. 1 as follows:

On page 35, line 17, after the word “contract”, insert “An owner-operator is an independent contractor.”

On page 36, line 5, strike “or motor carrier”.

On page 36, after line 11, insert a new (d) as follows and renumber subsequent sections accordingly:

“(d) An owner-operator and the owner-operator’s employees are not employees of the motor carrier for the purposes of this Act if the owner-operator has entered into a written agreement with the motor carrier that evidences a relationship in which the owner-operator assumes the responsibilities of an employer for the performance of work.”

KRIER  
LYON  
BROOKS

The substitute amendment was read and was adopted viva voce vote.

Senator Montford offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend S.B. 1 as follows:

On page 62, line 22, before the word “maximum” insert “contingency fees and”.

The amendment was read.

Senator Henderson offered the following amendment to Floor Amendment No. 6:

**Floor Amendment No. 7**

Amend Floor Amendment No. 6 to **S.B. 1** as follows:

On page 62, line 22, before the word “maximum” insert “contingency fees and”. Before the word “attorney’s” insert “claimant’s”.

The amendment to Floor Amendment No. 6 was read and was adopted viva voce vote.

Question recurring on the adoption of Floor Amendment No. 6 as amended, the amendment as amended was adopted viva voce vote.

Senator Glasgow offered the following amendment to the bill:

**Floor Amendment No. 8**

Amend **S.B. 1** as follows:

On page 99, line 7, amend SECTION 5.41(c) by adding a new subsection to read “Failure to comply with this subsection is a Class C administrative violation.”

The amendment was read and was adopted viva voce vote.

Senator Glasgow offered the following amendment to the bill:

**Floor Amendment No. 9**

Amend **S.B. 1** as follows:

On page 105, line 18, amend SECTION 6.15(e) by adding a new sentence to read as follows:

“The commission shall adopt rules to provide for a periodic reimbursement schedule, providing for reimbursement under this subsection at least annually.”

The amendment was read and was adopted viva voce vote.

Senator Montford offered the following amendment to the bill:

**Floor Amendment No. 10**

Amend **S.B. 1** as follows:

On page 111, lines 11-13, strike subparagraph (3) in its entirety.

The amendment was read and was adopted viva voce vote.

Senator Glasgow offered the following amendment to the bill:

**Floor Amendment No. 11**

Amend **S.B. 1** as follows:

On page 112, lines 21 and 22, amend SECTION 6.45(c) by deleting “administrative violation, subject to penalties under Section 10.21 of this Act.” and substituting “Class A administrative violation.”

The amendment was read and was adopted viva voce vote.

Senator Brooks offered the following amendment to the bill:

**Floor Amendment No. 12**

Amend S.B. 1, Section 9.02 as follows:

(1) On line 21, page 141, after "carrier", insert ", its agents, and those with whom the carrier has contracted to provide, review, or monitor services under this Act".

(2) On line 23, page 141, after "carrier", insert ", its agents, and those whom the carrier has contracted to provide, review, or monitor services under the Act".

(3) On line 25, page 141, after "carrier", insert ", its agents, and those with whom the carrier has contracted".

The amendment was read and was adopted viva voce vote.

Senator Montford offered the following amendment to the bill:

**Floor Amendment No. 13**

Amend S.B. 1 by striking Section 10.01 (lines 4 through 27, page 143 and lines 1 and 2, page 144) and substituting in lieu thereof the following:

"SECTION 10.01. LIABILITY FOR DISCRIMINATION. (a) A person may not discharge or otherwise discriminate against an employee because the employee, in good faith:

(1) initiated a workers' compensation claim; (2) retained a representative or an attorney to represent the employee regarding a claim; (3) instituted or caused to be instituted a proceeding under this Act; or

(4) testified or is about to testify at a proceeding under this Act.

(b) An employee who is discriminated against in violation of this section may file suit in district court. The burden of proof is on the employee.

(c) An employer found to be in violation of this section is liable to the employee for the wages lost during the period of the refusal, not to exceed 52 weeks. Liability incurred by an employer because of a violation of this section is not a benefit payable under this Act."

The amendment was read.

On motion of Senator Lyon, the amendment was tabled by the following vote: Yeas 20, Nays 11.

Yeas: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Johnson, Lyon, Parker, Parmer, Santiesteban, Tejada, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Sims.

Senator Krier offered the following amendment to the bill:

**Floor Amendment No. 14**

Amend S.B. 1, Section 10.42 (page 155, line 26) by adding the following between "damages" and the period:

"; provided however, that any such action against a governmental entity or unit, or employee of a governmental entity or unit, shall be governed by the provisions of Chapter 101, Civil Practice and Remedies Code (the Texas Tort Claims Act) and Chapter 104, Civil Practice and Remedies Code".

The amendment was read.

Senator Dickson offered the following substitute amendment to Floor Amendment No. 14:

**Floor Amendment No. 15**

Amend Floor Amendment No. 14 by substituting the following:

Amend S.B. 1, Article 10, page 155, line 23, by deleting Section 10.42 in its entirety.

DICKSON  
LYON

The substitute amendment was read.

Senator Montford moved to table the substitute amendment.

The motion to table was lost by the following vote: Yeas 15, Nays 16.

Yeas: Armbrister, Bivins, Brown, Glasgow, Haley, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Santiesteban, Sims, Tejada.

Nays: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Green, Johnson, Lyon, Parker, Parmer, Truan, Uribe, Washington, Whitmire, Zaffrini.

Question - Shall Floor Amendment No. 15 be adopted?

Senator McFarland offered the following amendment to Floor Amendment No. 15:

**Floor Amendment No. 16**

Amend Floor Amendment No. 15 to S.B. 1, Section 10.42 (page 155, line 26) by adding the following between "damages" and the period:

"or \$200,000, whichever is greater; provided, however, that any such action against a governmental entity or unit, or employee of a governmental entity or unit, shall be governed by the provisions of Chapter 101, Civil Practice and Remedies Code (the Texas Tort Claims Act) and Chapter 104, Civil Practice and Remedies Code".

The amendment was read.

On motion of Senator McFarland and by unanimous consent, the amendment was withdrawn.

Senator McFarland offered the following amendment to Floor Amendment No. 15:

**Floor Amendment No. 17**

Amend Floor Amendment No. 15 to S.B. 1, Section 10.42 (page 155, line 26) by adding the following between "damages" and the period:

"or \$1,000,000.00, whichever is greater; provided, however, that any such action against a governmental entity or unit, or employee of a governmental entity or unit, shall be governed by the provisions of Chapter 101, Civil Practice and Remedies Code (the Texas Tort Claims Act) and Chapter 104, Civil Practice and Remedies Code".

The amendment was read and was adopted viva voce vote.

Question recurring on adoption of the substitute as amended, the substitute as amended was adopted viva voce vote.

Senator Brooks offered the following amendment to the bill:

**Floor Amendment No. 18**

Amend S.B. 1, page 132, by striking subsection 8.01(c)(3) and substituting the following:

"(3) The data base shall be available for public access for a reasonable fee to be established by the commission. The identities of injured workers, beneficiaries and health care facilities shall not be disclosed, except as provided in Section 2.32 of this Act."

The amendment was read and was adopted viva voce vote.

Senator Brooks offered the following amendment to the bill:

**Floor Amendment No. 19**

Amend S.B. 1, page 142, by striking SECTION 9.05 and substituting the following:

"SECTION 9.05. PENALTIES AND SANCTIONS FOR HEALTH CARE PROVIDERS. The division shall review information and referrals from the division of medical review concerning alleged violations of this Act and may conduct investigation, make referrals and initiate administrative violation proceedings, pursuant to Section 9.06 and Article 10 of this Act."

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to the bill:

**Floor Amendment No. 20**

Amend S.B. 1 by deleting Section 1.04 in its entirety and substituting in lieu thereof the following:

SECTION 1.04. DISCOUNT RATE; INTEREST RATE. Any interest or discount provided for in this Act shall be at the rate of four percent a year.

The amendment was read.

On motion of Senator Caperton and by unanimous consent, the amendment was withdrawn.

Senator Parker offered the following amendment to the bill:

**Floor Amendment No. 21**

Amend S.B. 1 by striking all of Article 2 and inserting the following in lieu thereof:

**ARTICLE 2. TEXAS WORKERS' COMPENSATION COMMISSION  
CHAPTER A. ORGANIZATION**

SECTION 2.01. COMMISSION. (a) The Texas Workers' Compensation Commission is created on the effective date of this Act, and the terms of members of the Industrial Accident Board expire on that date.

(b) The Texas Workers' Compensation Commission is composed of three members appointed by the governor with the advice and consent of the senate.

(c) One member must be an employer of labor in an industry or business covered by this Act. One member must be a wage earner with demonstrated experience in representing wage earners regarding wages, hours, or conditions of employment. One member must be a practicing attorney with demonstrated experience in the workers' compensation laws of this state, who shall act as legal

adviser to the commission. In making appointments to the board, the governor shall attempt to reflect the social, geographic, and economic diversity of the state. To ensure balanced representation, the governor may consider the geographic location of a prospective appointee's domicile, the prospective appointee's experience, the number of employees employed by a prospective member who would represent employers, and the type of work performed by a prospective member who would represent wage earners and shall consider those factors in appointing members to fill vacancies on the board. In making the appointments, the governor shall consider recommendations made by groups that represent employers or wage earners.

(d) Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointee.

(e) A member of the commission is not liable in a civil action for any act performed in good faith in the execution of duties as a commission member.

(f) No member of the commission may be a lobbyist required to be registered with the secretary of state if the primary purpose of the person's employment is to influence the passage of legislation.

**SECTION 2.02. TERMS; VACANCY.** (a) Members of the commission hold office for staggered terms of six years. The term of one member expires February 1 of each odd-numbered year.

(b) For the initial appointments, the governor, with the advice and consent of the senate, shall designate the chair for a term expiring February 1, 1991; the member representing employers for a term expiring February 1, 1993; and the member representing wage earners for a term expiring February 1, 1995.

(c) If a vacancy occurs during a term, the governor shall appoint a replacement to fill the unexpired part of the term. The replacement shall be from the group represented by the member being replaced.

**SECTION 2.03. CHAIR.** (a) The attorney member of the commission shall act as chair.

(b) The chair may vote on all matters before the commission.

**SECTION 2.04. VOTING REQUIREMENTS.** Except as otherwise provided by this Act, the commission may take action by majority vote of its membership.

**SECTION 2.05. REMOVAL OF COMMISSION MEMBERS.** (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the commission;

(2) does not maintain during service on the commission the qualifications required for appointment to the commission;

(3) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or incapacity; or

(4) violates the prohibition of Section 2.01(f) of this Act.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director of the commission has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the commission of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

**SECTION 2.06. MEETINGS.** (a) The commission shall meet at least monthly.

(b) The commission may meet at other times at the call of the chair or as provided by the rules of the commission.

**SECTION 2.07. GENERAL POWERS AND DUTIES OF COMMISSION.**

(a) The commission shall adopt rules, forms, and procedures not inconsistent with this Act as necessary for the administration of this Act in accordance with Sections



1 through 12, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), except Sections 4(a)(3) and 4(b) of that Act.

(b) The commission or any of its members may:

- (1) investigate misconduct;
- (2) hold hearings;
- (3) issue subpoenas to compel the attendance of witnesses and the production of documents;
- (4) administer oaths;
- (5) take testimony either directly or by deposition or interrogatory;
- (6) assess and enforce penalties established by this Act; and
- (7) enter appropriate orders as authorized by this Act.

(c) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(e) The commission may accept gifts, grants, or donations as provided by rules adopted by the commission. A record of such gifts, grants, or donations shall be maintained in the office of the commission.

(f) The commission shall establish qualifications for representatives as defined in Section 1.03 of this Act and shall adopt rules establishing procedures for authorization of those representatives. If the representative is not an adjuster representing an insurance carrier or is not licensed to practice law, the representative may not receive a fee for providing representation under this Act.

(g) Any sanction that deprives a person of the right to practice before the board or the right to receive remuneration under this Act for a period exceeding 30 days or any other sanction suspending for a period exceeding 30 days or revoking a license, certification, or permit required for practice in the field of workers' compensation for a period exceeding 30 days may only be imposed by the commission.

(h) The commission shall appoint the executive director of the commission.

(i) Except for fees established by this Act, the commission shall establish fees for services provided to persons requesting services from the commission.

(j) The commission shall certify that a certified self-insurer has suspended payment of compensation or has otherwise become an impaired employer as that term is used in Section 3.51(4) of this Act.

(k) The commission shall consider and recommend to the legislature changes to this Act. Recommended changes shall be forwarded to the legislature on or before December 1 of each even-numbered year.

(l) The commission may appoint advisory committees as it deems necessary.

(m) The rights and duties imposed on the commission by this section shall not be delegated.

**SECTION 2.08. EXECUTIVE DIRECTOR.** (a) The executive director is the executive officer and administrative head of the commission. The executive director exercises all rights, powers, and duties imposed or conferred by law on the commission, except for rule making and other rights, powers, and duties specifically reserved by this Act to members of the commission.

(b) The executive director shall hire persons to conduct proceedings under Article 6 of this Act and other personnel as necessary.

(c) The executive director serves at the pleasure of the commission.

**SECTION 2.09. POWERS AND DUTIES OF THE EXECUTIVE DIRECTOR.** (a) The executive director may delegate all powers and duties as necessary.

(b) The executive director shall conduct the day-to-day operations of the commission in accordance with policies established by the commission and otherwise implement commission policy.

(c) The executive director may correct clerical errors in the entry of orders.

(d) The executive director may institute an action in the commission's name to enjoin the violation of this Act.

(e) The executive director is the custodian of the commission's records and shall perform those duties required by law, including provision of copies and certification of records. The executive director may destroy any records maintained by the commission relating to a claim 50 years after the last date on which benefits were paid on the claim to which the records refer. Records maintained by the commission may be preserved in any format permitted by Chapter 441, Government Code, and rules adopted by the Texas State Library under that chapter.

(f) The executive director is the agent for service of process on out-of-state employers.

(g) The executive director shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(h) The executive director shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

(i) The executive director shall prepare and maintain a written policy statement approved by the commission to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the commission's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to address those areas of significant underutilization appropriately.

(j) A written policy statement prepared under Subsection (i) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

(k) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (j) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

**SECTION 2.10. DIVISIONS OF THE COMMISSION.** (a) The commission may establish divisions within the commission for effective administration and performance of commission functions. The commission may allocate and reallocate functions among the divisions.

(b) In addition to the divisions established under Subsection (a) of this section, the following divisions are established:

(1) division of medical review;

(2) division of compliance and practices;

(3) division of hearings; and

(4) division of risk management.

(c) The executive director shall appoint the directors of the divisions of the commission. The directors serve at the pleasure of the commission.

**SECTION 2.11. PUBLIC INTEREST INFORMATION AND COMPLAINTS.** (a) The executive director shall prepare information of public interest describing the functions of the commission and the procedures by which complaints are filed with and resolved by the commission. The executive director shall make the information available to the public and appropriate state agencies.

(b) The executive director shall keep an information file about each written complaint filed with the commission that is unrelated to a specific workers' compensation claim. If such a complaint is filed with the commission, the executive director, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(c) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on issues under the general jurisdiction of the commission.

(d) The executive director shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental handicap may be provided reasonable access to workers' compensation proceedings.

(e) The commission shall maintain information as to the race, ethnicity, sex, classification of injury, and amount of compensation received on every compensable injury.

**SECTION 2.12. SUBSEQUENT INJURY FUND.** (a) The subsequent injury fund is established as a special fund in the state treasury.

(b) The subsequent injury fund is liable for payment of compensation as provided in Section 4.26 of this Act.

(c) The executive director shall appoint an administrator for the subsequent injury fund.

[Sections 2.13-2.20 reserved for expansion]

#### **CHAPTER B. COMMISSION FINANCING**

**SECTION 2.21. COMMISSION FUNDING.** Unless otherwise provided, all proceeds, including advance deposits for purchase of services, collected under this Act shall be deposited in the General Revenue Fund of the state treasury to the credit of the commission. The funds may be spent as authorized by legislative appropriation on warrants issued by the comptroller of public accounts under requisitions made by the commission.

**SECTION 2.22. MAINTENANCE TAXES AND FEES.** (a) For the purpose of providing for the costs of administering this Act, all insurance carriers, except governmental entities, shall pay annually a maintenance tax. The total taxes assessed for this purpose shall not exceed one percent of the correctly reported gross workers' compensation insurance premium plus two percent of the total tax base of all certified self-insurers as computed in Section 3.61(b) of this Act.

(b) Workers' compensation insurance companies shall be taxed at the rate established under Section 2.23 of this Act, and those taxes shall be collected in the manner provided for collection of other taxes on gross premiums from workers' compensation companies as provided in Article 5.68, Insurance Code.

(c) Certified self-insurers shall pay a fee and maintenance and commission taxes as provided in Sections 3.60, 3.62, and 3.63 of this Act.

**SECTION 2.23. RATE OF ASSESSMENT.** (a) The commission shall set and certify to the State Board of Insurance the rate of assessment no later than October 31 of each year, taking into account the following factors:

(1) expenditures projected as necessary for the commission to administer this Act during the fiscal year for which the rate of assessment is set;

(2) projected employee benefits paid from general revenues;

(3) surpluses or deficits produced by this tax in the preceding year; and

(4) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, gifts, and penalties recovered under this Act.

(b) In setting the rate of assessment, the commission shall not consider revenue or expenditures related to:

- (1) the crime victims compensation fund;
- (2) the division of risk management; or
- (3) the Employers' Mutual State Fund.

**SECTION 2.24. WITHDRAWAL FROM BUSINESS.** If an insurance carrier withdraws from business in this state or the certificate of a certified self-insurer is terminated, the insurance commissioner or the executive director of the commission shall proceed at once to collect any tax due using legal process as necessary.

**SECTION 2.25. TAX RATE SURPLUS OR DEFICIT.** (a) If the tax rate assessed by the commission for a given year fails to produce sufficient revenue to make all expenditures authorized by legislative appropriation, the deficit shall be paid from the General Revenue Fund and reflected in the rate of assessment for the next year.

(b) If the tax rate assessed by the commission for a given year exceeds the revenues required to make all expenditures authorized by the legislature, the excess shall be deposited in the General Revenue Fund to the credit of the commission and reflected in the rate of assessment for the next year.

**SECTION 2.26. FUNDING OF SUBSEQUENT INJURY FUND.** (a) If a compensable death occurs and there is no legal beneficiary or if a claim for death benefits is not made in a timely manner, the insurance carrier shall pay to the commission for deposit in the subsequent injury fund an amount equal to 360 weeks of the death benefits otherwise payable.

(b) The carrier may elect or the commission may order that death benefits payable to the fund be commuted on written approval of the executive director.

(c) If a claim for death benefits is not filed with the commission by a beneficiary or beneficiaries on or before the first anniversary of the death of the employee, it shall be presumed, for the purposes of this section only, that no legal beneficiary survived the deceased employee. The presumption does not apply against a minor beneficiary or an incompetent beneficiary for whom no guardian has been appointed.

(d) If the carrier makes payment to the subsequent injury fund and the commission later determines that a legal beneficiary is entitled to the death benefits, the commission shall order the fund to reimburse the carrier for the amount overpaid to the fund.

**SECTION 2.27. AUDITS.** The state auditor shall audit the financial transactions of the commission at least once during each biennium.

[Sections 2.28-2.30 reserved for expansion]

#### **CHAPTER C. RECORDS**

**SECTION 2.31. INJURY INFORMATION CONFIDENTIAL.** (a) Information in or derived from a claim file regarding an employee is confidential and shall not be disclosed by the commission except as provided in this Act.

(b) Information concerning an employee who has been finally adjudicated of wrongfully obtaining payment under Section 10.04 or 10.05 of this Act is not confidential.

(c) The commission shall perform and release a record check on an employee or release injury information to the parties listed in Subsection (d) of this section if:

(1) the claim is open or pending before the commission, on appeal to a court of competent jurisdiction, or the subject of a subsequent suit where the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form developed by the commission for this purpose and provides all required information.

(d) Information on a claim may be released as provided in Subsection (c) of this section to:

- (1) the employee or the employee's legal beneficiary;
- (2) the employee's or the legal beneficiary's representative;
- (3) the employer at the time of injury;
- (4) the insurance carrier, including the Employers' Mutual State

Fund;

(5) the Texas Certified Self-Insurer Guaranty Association, if that association has assumed the obligations of an impaired employer;

(6) the Texas Property and Casualty Insurance Guaranty Association, if that association has assumed the obligations of an impaired insurance company; or

(7) a third party litigant in a lawsuit where the cause of action arises from the incident which gave rise to the injury, in which case Subsection (c)(1) of this section does not apply.

SECTION 2.32. EXCEPTIONS. (a) The commission may release information regarding a claim to a governmental agency, political subdivision, or regulatory body for the following purposes:

(1) investigating an allegation of criminal offense or licensing or regulatory violation;

(2) providing unemployment benefits, crime victims compensation benefits, vocational rehabilitation services, or health care benefits;

(3) investigating occupational safety or health violations; or

(4) verifying income on an application for benefits under an income-based state or federal assistance program.

(b) The commission shall release information on a claim to:

(1) the State Board of Insurance for any statutory or regulatory purpose;

(2) legislative committees for legislative purposes; and

(3) state or federal elected officials requested to provide assistance by constituents who qualify to obtain injury information under Section 2.31(d) of this Act, if the request is provided to the commission.

SECTION 2.33. INFORMATION AVAILABLE TO PROSPECTIVE EMPLOYERS. (a) When a person applies for employment, the prospective employer who has workers' compensation coverage is entitled, on compliance with this chapter, to obtain information on the applicant's prior injuries.

(b) The employer must make the request by telephone or file the request in writing not more than 14 days after the date on which the application for employment is made.

(c) The request must include the applicant's name, address, and social security number.

(d) The employer must obtain written authorization from the applicant before making the request.

(e) If the request is made in writing, the authorization shall be filed simultaneously. If the request is made over the telephone, the employer shall file the authorization not later than the 10th day after the date on which the request is made.

SECTION 2.34. REPORT OF PRIOR INJURY. (a) The commission shall review its records upon receipt of a valid request from a prospective employer.

(b) If the commission finds that the applicant has been paid income benefits on three or more general injury claims in the preceding five years, the commission shall release the date and description of each injury to the employer.

(c) The information may be released in writing or by telephone.

(d) The commission shall refuse to release information except on receipt of written authorization from each applicant if the employer requests information on three or more applicants at the same time.

(e) For the purposes of this section, "general injury" means an injury other than an injury limited to one or more of the following:

- (1) an injury to a digit, limb, or member;
- (2) an inguinal hernia; or
- (3) vision or hearing loss.

SECTION 2.35. FAILURE TO FILE AUTHORIZATIONS; ADMINISTRATIVE VIOLATION. An employer who receives information by telephone and fails to file the necessary authorization in a timely manner commits a Class B administrative violation. Each failure to file is a separate violation.

SECTION 2.36. CONFIDENTIALITY TRANSFERS. Any information pertaining to a claim which is confidential under this Act remains confidential when released to any person, except when used in court for the purposes of an appeal.

SECTION 2.37. FAILURE TO MAINTAIN CONFIDENTIALITY; OFFENSE. (a) A person who knowingly, intentionally, or recklessly publishes, discloses, or distributes confidential information to a person not authorized to receive such information directly from the commission commits an offense.

(b) A person who knowingly, intentionally, or recklessly receives information that is confidential under this chapter that the person is not authorized to receive commits an offense.

(c) An offense under this section is a Class A misdemeanor.

(d) An offense under this section may be prosecuted in the district courts of Travis County or of the county in which the information was unlawfully received, published, disclosed, or distributed.

(e) The district courts of Travis County have jurisdiction to enjoin the use, publication, disclosure, or distribution of confidential information under this section.

SECTION 2.38. STATISTICAL INFORMATION. The commission or any other governmental agency may prepare and release statistical information if the identity of an employee is not explicitly or implicitly disclosed.

SECTION 2.39. FEES AUTHORIZED. Unless a fee is specifically established, the commission may establish reasonable fees for services provided under this chapter.

The amendment was read.

Senator Montford moved to table the amendment.

The motion to table was lost by the following vote: Yeas 14, Nays 17.

Yeas: Armbrister, Bivins, Brown, Glasgow, Haley, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Sims, Tejada.

Nays: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Green, Johnson, Lyon, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Question recurring on the adoption of the amendment, the amendment was adopted viva voce vote.

**RECORD OF VOTES**

Senators Brown, Glasgow, Krier, Leedom, McFarland, Montford and Sims asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 21.

Senator Dickson offered the following amendment to the bill:

**Floor Amendment No. 22**

(1) Amend **S.B. 1**, Article 3, Section 3.05 (d) on page 36 by adding the following sentence after the sentence ending on line 24:

"No employee of such a subcontractor shall be considered an employee of the general contractor for the purpose of any third party action by said employee or his beneficiary against said general contractor."

The amendment was read.

On motion of Senator Dickson and by unanimous consent, the amendment was withdrawn.

Senator Dickson offered the following amendment to the bill:

**Floor Amendment No. 23**

Amend **S.B. 1** by striking SECTION 3.42 in its entirety and renumbering subsequent sections accordingly.

The amendment was read.

On motion of Senator Montford, the amendment was tabled by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Bivins, Brooks, Brown, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, McFarland, Montford, Parker, Ratliff, Santiesteban, Sims, Tejada, Truan, Whitmire.

Nays: Barrientos, Caperton, Carriker, Dickson, Leedom, Lyon, Parmer, Uribe, Washington, Zaffirini.

Senator Parker offered the following amendment to the bill:

**Floor Amendment No. 24**

Amend **S.B. 1** by striking Article 4 in its entirety and substitute in lieu thereof the following:

**ARTICLE 4. BENEFITS****CHAPTER A. GENERAL PROVISIONS**

**SECTION 4.01. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES.** (a) Except as provided by Subsection (b) of this section, a recovery of workers' compensation benefits under this Act is the exclusive remedy of an employee or legal beneficiary against the employer or an agent, servant, or employee of the employer for the death of or a work-related injury sustained by a covered employee.

(b) This section does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of the body of a deceased employee whose death was caused by an intentional act or omission of the employer or by the employer's gross negligence. For the purposes of this section, "gross negligence" has the meaning assigned to it by Section 41.001, Civil Practice and Remedies Code.

**SECTION 4.02. POLICY STATEMENT ON MENTAL TRAUMA INJURIES.** It is the express intent of the legislature that nothing in this Act shall be construed to limit or expand recovery in cases of mental trauma injuries.

SECTION 4.03. SURVIVAL OF CAUSE OF ACTION. A right of action survives in a case based on a compensable injury that results in the employee's death.

SECTION 4.04. EMPLOYER LIABILITY TO THIRD PARTY. If an action for damages is brought by an injured employee, the legal beneficiary of a deceased employee, or an insurance carrier against a third party liable to pay damages for the injury or death as provided by Section 4.05 of this Act and the action results in a judgment against the third party or a settlement by the third party, the employer is not liable to the third party for any reimbursement or damages based on the judgment or settlement unless the employer executed, before the injury or death occurred, a written agreement with the third party to assume the liability.

SECTION 4.05. THIRD PARTY LIABILITY. (a) If a third party is or becomes liable to pay damages for an injury or death which is compensable under this Act, the employee or legal beneficiary may seek damages from the third party. An employee or legal beneficiary who seeks damages from a third party remains entitled to pursue a claim for workers' compensation benefits under this Act.

(b) If compensation is claimed under this Act by the injured employee or the employee's legal beneficiaries, the insurance carrier is subrogated to the rights of the injured employee and may enforce in the name of the injured employee or the legal beneficiaries the liability of that other person. If the recovery is for a sum greater than that paid or assumed by the insurance carrier to the employee or the legal beneficiaries, then, out of the amount recovered, the insurance carrier shall reimburse itself and pay the costs, and the excess recovered shall be paid to the injured employee or the beneficiaries.

(c) If a claimant receives compensation from the subsequent injury fund, the commission is considered to be the insurance carrier under this section for purposes of those benefits, is subrogated to the rights of the injured employee, and is entitled to reimbursement in the same manner as the insurance carrier. The commission shall remit money recovered under this subsection to the state treasurer for deposit to the credit of the subsequent injury fund.

(d) If the claimant is represented by an attorney and the insurance carrier's interest is not actively represented by an attorney, the insurance carrier shall pay a fee to the claimant's attorney not to exceed one-third of the subrogation recovery or as may have been agreed upon between the claimant's attorney and the insurance carrier, or, in the absence of an agreement, the court shall allow a reasonable attorney's fee to the claimant's attorney for recovery of the insurance carrier's interest which in no case shall exceed 33-1/3 percent payable out of the insurance carrier's recovery, and a proportionate share of expenses, payable out of the insurance carrier's part of the recovery. If the claimant's attorney is also representing the subrogated insurance carrier, a full written disclosure must be made by the attorney to the claimant before actual employment by the insurance carrier as an attorney. The disclosure must be acknowledged by the claimant, and a signed copy of the disclosure shall be furnished to all concerned parties and made a part of the commission file. A copy of the disclosure with the authorization and consent shall also be filed with the claimant's pleadings before any judgment entered and approved by the court. Unless the claimant's attorney complies with all of the requirements as prescribed in this section, the attorney shall not be entitled to receive any of the fees prescribed in this section to which he would be entitled pursuant to an agreement with the insurance carrier.

(e) If the insurance carrier obtains an attorney to actively represent its interest and if the attorney actively participates in obtaining a recovery, the court shall award and apportion an attorney's fee allowable out of the insurance carrier's subrogation recovery between those attorneys, considering the benefit accruing to the insurance carrier as a result of each attorney's service. The aggregate of those fees may not exceed 33-1/3 percent of the subrogated interest.



(f) If at the conclusion of a third party action, a workers' compensation claimant is entitled to compensation, the net amount recovered by the claimant from the third party action shall be applied to reimburse the insurance carrier for past benefits and medical expenses paid. Any amount in excess of past benefits and medical expenses shall be treated as an advance against future benefit payments of compensation that the claimant is entitled to receive under this Act. If the advance is adequate to cover all future compensation and medical benefit payments as provided by this Act, the insurance carrier is not required to make further payments. If the advance is insufficient, the insurance carrier shall resume the payments when the advance is exhausted. The reasonable and necessary medical expenses incurred by the claimant because of the injury shall be deducted from the advance in the same manner as benefit payments.

(g) For purposes of determining attorneys' fees under this section, only the amount recovered for past benefits and medical expenses paid by the insurance carrier may be considered.

**SECTION 4.06. CONTINUATION OF WAGES.** (a) After an injury and during the time that the insurance carrier is not paying benefits, the employer may continue to pay the employee's wages or may initiate weekly payments to the employee.

(b) If the injury is found compensable and the insurance carrier initiates compensation, the insurance carrier shall reimburse the employer for the amount of compensation to which the employee was entitled under this Act during the period that the insurance carrier was not making payments and the employer continued to pay the employee's wages or made weekly payments to the employee.

(c) The employer shall notify the commission and the insurance carrier of the initiation of and the amount of payments made under this section. The notice must be given on forms prescribed by the commission.

(d) Employer payments made under this section may not be construed as an admission of compensability and do not affect the payment of benefits from any other source.

(e) If the employer does not, within 10 days of the initiation of payments under this section, notify the commission of the injury and payment of wages, the employer waives the provisions of Subsection (b) of this section and is not entitled to reimbursement under that subsection.

**SECTION 4.07. EXEMPT FROM LEGAL PROCESS; ASSIGNABILITY.**

(a) Benefits received under this Act are exempt from garnishment, attachment, judgment, and other actions or claims.

(b) Except as provided by Subsection (c) of this section, benefits are not assignable.

(c) A legal beneficiary may, with commission approval, assign the right to death benefits.

**SECTION 4.08. ALLOWABLE LIENS.** Income or death benefits are subject only to the following liens or claims, to the extent of any income or death benefits that are unpaid on the date the insurance carrier receives written notice of the lien, in the following order of priority:

(1) an attorney's fee for representing an employee or legal beneficiary in any matter arising under this Act;

(2) court-ordered child support; or

(3) a subrogation interest established under this Act.

**SECTION 4.09. ATTORNEYS' FEES REGULATED.** (a) All fees of attorneys for representing claimants before the commission under the provisions of this law shall be subject to the approval of the commission. No attorneys' fees for representing claimants before the commission shall be allowed or approved against any part or parties not represented by such attorney, not exceeding an amount equal

to twenty-five percent (25%) of the total recovery, in addition to the reasonable expenses incurred by the attorney in the preparation and presentation of said claim before the commission, such expenses to be allowed by the commission.

(b) Where an attorney represents only a part of those interested in the allowance of a claim before the commission and his services in prosecuting such claim and obtaining an award there inures to the benefit of others jointly interested therein, then the commission may take these facts into consideration and allow the attorney a reasonable charge, to be assessed against the interest of those receiving benefits from the service of such attorney.

(c) The attorneys' fees herein provided for may be redeemed by the insurance carrier by the payment of a lump sum or may be commuted by the agreement of the parties subject to the approval of the commission, but not until the claim represented by said attorney has been finally determined by the commission and recognized and accepted by the carrier. After the approval, as first above provided for, if the insurance carrier is notified in writing of such claim or agreement for legal services, the same shall be a lien against any amount thereafter to be paid as compensation; provided, that where the employee's compensation is payable by the carrier in periodical installments, the commission shall fix at the time of approval the proportion of each installment to be paid on account of said legal services.

(d) The attorneys' fee for representing a party before the commission may be redeemed by the insurance carrier by the payment of a lump sum, subject to the approval of the commission as provided by this section, but not until the claim represented by the attorney has been finally determined by the commission and recognized and accepted by the carrier.

**SECTION 4.10. AVERAGE WEEKLY WAGE.** (a) In this section:

(1) "Spendable earnings" is the employee's gross average weekly wage at the time of injury reduced by an amount determined to reflect amounts which would be withheld from such wages under federal or state income tax laws and under Subchapter IV of Chapter 21 of the Internal Revenue Code of 1986 (relating to social security taxes). In all cases, it is to be assumed that the amount withheld would be determined on the basis of anticipated liability of the employee for taxes for the taxable year in which income benefits are being paid, without regard to any itemized deductions but taking into account the maximum number of personal deductions for dependents allowable to the employee. The commission shall annually prepare and distribute tables that will be used to calculate the spendable earnings of an employee on the basis of gross average weekly wage, number of dependents, marital status, and payroll tax deductions.

(2) "Wages" includes every form of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and other advantage, which can be estimated in money which the employee receives from the employer as part of the employee's remuneration.

(b) If the injured employee worked in the employment in which the employee was working at the time of the injury, whether for the same employer or not, during at least 180 days in the year immediately preceding the injury, the average weekly wage consists of the gross wages earned during that year divided by the number of weeks actually worked in that year.

(c) If the injured employee did not work in the employment in which the employee was working at the time of the injury, whether for the same employer or not, during at least 180 days in the year immediately preceding the injury, the average weekly wage consists of the gross wages during that year which an employee of the same class, working substantially the whole of such immediately preceding year in the same or similar employment, in the same or a neighboring place, earned divided by the number of weeks actually worked in that year.

(d) If the methods adopted under Subsections (b) and (c) of this section cannot be applied reasonably due to the irregularity of the employment, a determination of the employee's average weekly wage in a proceeding under this Act shall be by a method that is fair, just, and reasonable to all parties and consistent with the methods established under this section.

(e) The average weekly wage for an employee who is a minor, apprentice, trainee, or student at the time of the injury, whose employment or earnings at the time of the injury are limited primarily because of apprenticeship, continuing formal training, or education intended to enhance the employee's future wages, and whose wages would reasonably be expected to change based on change of employment during the period in which income benefits or death benefits are payable shall be adjusted to reflect the level of expected wages during that period for the purpose of computing those benefits. The adjustment shall not consider expected wage levels for a period occurring more than eight years after the date of the injury, except in the case of injuries compensated under Section 4.25 of this Act.

(f) In the event of a dispute as to the employee's wages or weeks worked, the commission shall request the employer to file with the commission a copy of all records maintained by the employer reflecting the employee's wages and weeks worked. The employer shall submit such information to the commission not later than the 10th day after it receives the request from the commission. The commission shall immediately notify the parties on receipt of such records.

**SECTION 4.11. MAXIMUM WEEKLY BENEFITS.** (a) On and after the effective date of this Act, the maximum weekly income benefit is 100 percent of the state average weekly wage.

(b) The state average weekly wage equals the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission.

(c) Using the averages determined by the Texas Employment Commission, the commission shall establish the maximum weekly income benefit for each state fiscal year not later than September 1 of each year. The commission shall round the maximum to the nearest whole dollar amount.

(d) The maximum weekly income benefit in effect on the date of injury is applicable for the entire period during which the income benefits are payable.

**SECTION 4.12. MINIMUM WEEKLY BENEFITS.** (a) On and after the effective date of this Act, the minimum weekly benefit is 10 percent of the state average weekly wage as determined under Section 4.11 of this Act, rounded to the nearest whole dollar amount.

(b) The commission shall establish the minimum weekly income benefit for each state fiscal year not later than September 1 of each year.

(c) The minimum weekly income benefit in effect on the date of injury is applicable for the entire period during which the income benefits are payable.

**SECTION 4.13. INTEREST ON ACCRUED INCOME BENEFITS.** (a) In any order to pay income or death benefits accrued but not paid, the order shall include interest on the amount of compensation due at the rate provided in Section 1.04 of this Act.

(b) Accrued compensation and interest shall be paid in a lump sum.

**SECTION 4.14. DATE OF INJURY FOR OCCUPATIONAL DISEASE.** For purposes of this Act, the date of injury in the case of an occupational disease is the date on which disability was caused by the occupational disease.

**SECTION 4.15. COMPENSABILITY OF HEART ATTACKS.** A heart attack is a compensable injury under this Act only if:

(1) the attack can be identified as:

(A) occurring at a definite time and place; and  
 (B) a specific event occurring in the course and scope of employment was a contributing factor;

(2) the preponderance of the medical evidence regarding the attack indicated that the employee's work rather than the natural progression of a preexisting heart condition or disease was a contributing factor of the attack; and

(3) the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

**SECTION 4.16. REQUIRED MEDICAL EXAMINATIONS.** (a) The commission may require the employee to submit to medical examinations to evaluate any question about the appropriateness of the health care received by the employee, the impairment or disability of the employee caused by the compensable injury, or analogous issues. The commission shall require the examination only after the insurance carrier has attempted and failed to receive the permission and concurrence of the employee or his attorney or representative.

(b) The insurance carrier shall pay for such examination and the reasonable expense incident to the injured employee in submitting to such examination. The insurance carrier shall be entitled to the examination only once in a 180-day period. Subsequent examinations shall be by the same doctor unless approved by the commission.

(c) The injured employee shall have the privilege to have a doctor of his own selection present to participate in such examination. When an examination is directed by the commission at the request of the insurance carrier, the insurance carrier shall pay the fee of the doctor selected by the employee, such fee to be fixed by the commission.

(d) If the report of the examining doctor indicates the employee can return to work immediately, the commission shall schedule a benefit review conference on the next available docket. The insurance carrier shall not suspend medical or income benefit payments pending the benefit review conference.

**[Sections 4.17-4.20 reserved for expansion]**

#### **CHAPTER B. INCOME BENEFITS**

**SECTION 4.21. INCOME BENEFITS; DETERMINATION BY COMMISSION.** (a) An employee is entitled to income benefits to compensate the employee for a compensable injury as provided in this chapter.

(b) Except as otherwise provided by this Act, income benefits shall be paid without order from the commission on a weekly basis as and when they accrue. Entitlement to income benefits under this chapter terminates on the death of the employee, and no interest in future income benefits survives after the employee's death.

**SECTION 4.22. ACCRUAL OF RIGHT TO INCOME BENEFITS.** (a) Weekly income benefits may not be paid under this Act for an injury that does not result in disability for a period of at least one week. If disability extends beyond one week, weekly income benefits begin to accrue on the eighth day after injury. This section does not preclude recovery of benefits under any other section of this Act.

(b) If disability does not follow at once after the injury occurs or within eight days of the occurrence but does result subsequently, weekly income benefits begin to accrue on the eighth day after the date the disability began.

(c) If the disability continues for four weeks or longer after the beginning date of the disability, the compensation shall be computed from the beginning date of the disability.

**SECTION 4.23. TEMPORARY INCOME BENEFITS.** (a) An employee who has disability is entitled to temporary income benefits. These benefits accrue beginning on the 8th day of disability and shall be paid weekly. On the initiation of compensation as provided under Section 5.21 of this Act, the insurance carrier shall pay temporary income benefits as provided by this section.

(b) Temporary income benefits continue until the earliest of:

- (1) the injured employee's return to work;
- (2) a release by the treating physician to return to work without restrictions relating to the compensable injuries suffered by the employee;
- (3) the injured employee's unreasonable refusal of employment consistent with any physical restrictions, offered to the employee in the locality where the employee was injured or at a place agreeable to the employee;
- (4) the resolution of the claim by settlement, lump sum payment, or matured award; or
- (5) the expiration of 401 weeks.

(c) During the first 26 weeks, temporary income benefits are payable at the rate of 85 percent of the difference between the employee's pre-injury weekly spendable earnings and the employee's weekly spendable earnings after the injury, not to exceed the maximum weekly benefit. After that, temporary income benefits are payable at the rate of 80 percent of the difference between the employee's pre-injury weekly spendable earnings and the employee's weekly spendable earnings after the injury, not to exceed the maximum weekly benefit.

**SECTION 4.24. IMPAIRMENT GUIDELINES.** The commission shall use the most current publication of the Guides to the Evaluation of Permanent Impairment by the American Medical Association for the determination of the existence and degree of an employee's impairment. All determinations of impairment must be made in accordance with the above-named guide. The guide used to make the initial rating shall be used for all subsequent determinations regarding the same injury. The commission shall implement the impairment guidelines to be effective January 1, 1991.

**SECTION 4.25. ELIGIBILITY FOR RECOVERY OF IMPAIRMENT BENEFITS.** Notwithstanding any other provision of this Act, a claimant is not entitled to recover impairment benefits unless there has been evidence of impairment supported by an objective clinical or laboratory finding as that term is defined by this Act.

**SECTION 4.26. IMPAIRMENT INCOME BENEFITS.** (a) All awards of impairment income benefits shall be based on an impairment rating using the impairment guidelines referred to in Section 4.24 of this Act, as well as the employee's ability to get and keep a job performing the usual tasks of a worker.

(b) Impairment income benefits are paid weekly at the rate of 80 percent of the spendable earnings of the employee, not to exceed the maximum weekly benefit under Section 4.11 of this Act.

(c) An employee's entitlement to impairment income benefits begins the day after the employee is no longer entitled to temporary income benefits under Section 4.23 of this Act and continues until the earlier of:

- (1) the expiration of a period computed at the rate of three weeks for each percentage point of impairment; or
- (2) the death of the employee.

(d) After the employee has been certified by the treating physician as having reached medical stability, or is released to return to work, the treating physician shall evaluate the condition of the employee and assign an impairment rating, using the impairment guidelines referred to in Section 4.24 of this Act. If the certification and evaluation are performed by a doctor other than the employee's treating doctor, the certification and evaluation shall be submitted to the treating doctor and the treating doctor shall indicate agreement or disagreement with the certification and evaluation. The certifying doctor shall issue a written report to the commission, the employee, and the insurance carrier certifying that medical stability has been reached and stating the impairment rating and describing any reduction of the employee's pre-injury physical ability resulting from the compensable injury.

(e) The insurance carrier shall begin to pay the impairment income benefits not later than the fifth day after the date on which the insurance carrier receives the doctor's report certifying maximum medical improvement.

(f) The insurance carrier shall pay the employee impairment income benefits for a period based on the impairment rating or, if the insurance carrier disputes the impairment rating, based on its reasonable assessment of the correct rating.

(g) If the impairment rating is disputed, the commission shall direct the employee to be examined by a designated doctor selected by the mutual agreement of the parties. If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor selected by the commission. The designated doctor shall report to the commission in writing.

[Sections 4.27-4.28 reserved for expansion]

**SECTION 4.29. DURATION OF TEMPORARY AND IMPAIRMENT INCOME BENEFITS.** The employee's eligibility for temporary income benefits and impairment income benefits terminates on the expiration of 401 weeks from the date of injury.

**SECTION 4.30. CONTRIBUTING INJURY.** (a) At the request of the insurance carrier, the commission may order that impairment income benefits be reduced in a proportion equal to the proportion of a documented impairment that resulted from earlier compensable injuries.

(b) The commission shall consider the cumulative impact of the compensable injuries on the employee's overall impairment in determining a reduction under this section.

(c) If the combination of the compensable injuries results in an injury compensable under Section 4.31 of this Act, the benefits for that injury shall be paid as provided by Section 4.47 of this Act.

**SECTION 4.31. LIFETIME INCOME BENEFITS.** (a) Income benefits shall be paid until the death of the employee for:

- (1) total and permanent loss of sight in both eyes;
- (2) loss of both feet at or above the ankle;
- (3) loss of both hands at or above the wrist;
- (4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist;
- (5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or
- (6) an injury to the skull resulting in incurable insanity or imbecility.

(b) The total and permanent loss of use of a member under Subsection (a) of this section is considered equal to the loss of the member.

(c) Lifetime income benefits are payable at the rate of 80 percent of the employee's weekly spendable earnings. Lifetime benefits may not exceed the maximum weekly benefit, except that benefits being paid shall be increased three percent a year notwithstanding the maximum weekly benefit.

(d) In no other case may the period of income benefits be greater than 401 weeks from the date of injury.

**SECTION 4.32. ADVANCE OF BENEFITS BASED ON HARDSHIP.** (a) The commission may grant an employee who is suffering financial hardship advances as provided by this Act against the amount of income benefits to which the employee may be entitled, if there is a likelihood that income benefits will be paid in the future. Advances may be ordered before or after the claimant attains maximum medical improvement. An insurance carrier shall pay any advance ordered.

(b) An employee who desires an advance shall apply to the commission on a form prescribed by the commission describing the grounds for the advance.

(c) An advance under this section may not exceed an amount equal to four times the maximum weekly benefit for temporary income benefits as computed in Section 4.11 of this Act. The commission may not grant more than three advances to a particular employee based on the same injury.

SECTION 4.33. SETTLEMENTS. (a) A settlement of income benefits may not be paid in a lump sum unless:

- (1) the insurance carrier has contested liability;
- (2) the insurance carrier has suspended benefits in dispute over extent and duration;
- (3) the employee has been released to return to work; or
- (4) the employee has demonstrated hardship to the satisfaction of the commission. In evaluating the hardship of a claimant, the commission shall consider:

- (A) the employee's pre-injury spendable earnings;
- (B) any increase in the total expenses of the employee's household, where those expenses are incurred to maintain that household but not to improve that household's standard of living;
- (C) any decrease in the total net income of the employee's household;
- (D) emergencies or illness in the employee's immediate family or household; and
- (E) any other matters the commission determines are relevant to the employee's financial condition.

(b) A settlement takes effect on the date it is approved by the director of the division of hearings.

(c) The director of the division of hearings shall approve a settlement within seven days from the date it is received at the commission unless the director finds that:

- (1) the settlement does not accurately reflect the terms of the agreement between the parties;
- (2) the settlement does not reflect adherence to all appropriate provisions of law and the policies of the commission; or
- (3) under the law and facts, the settlement is not in the best interest of the claimant.

(d) A settlement must be signed by the director of the division of hearings and all parties to the dispute.

(e) A party to a settlement may withdraw acceptance of the settlement at any time before its effective date.

**[Sections 4.34-4.40 reserved for expansion]**

#### CHAPTER C. DEATH AND BURIAL BENEFITS

SECTION 4.41. DEATH BENEFITS. (a) If the compensable injury results in death, the insurance carrier shall pay death benefits to the legal beneficiary of the employee.

(b) For the first 26 weeks of payment of death benefits, the amount of the weekly benefit shall be equal to 85 percent of the deceased employee's spendable earnings. Thereafter, the amount of the weekly benefit shall be equal to 80 percent of the deceased employee's spendable earnings.

SECTION 4.42. DISTRIBUTION OF DEATH BENEFITS. (a) Death benefits shall be paid to the legal beneficiaries according to the priority established by this section.

(b) If there is no eligible child or grandchild, all the death benefits shall be paid to the eligible spouse.

(c) If there is no eligible spouse, the death benefits shall be paid to the eligible children or grandchildren.

(d) If there is an eligible child or grandchild and an eligible spouse, half of the death benefits shall be paid to the eligible spouse and half shall be paid in equal shares to the eligible children. If a child has predeceased the employee, death benefits that would have been paid to that child shall be paid in equal shares per stirpes to the children of the deceased child.

(e) If the employee is not survived by an eligible spouse, child, or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, stepparent, sibling, or grandparent of the deceased. If more than one of those dependents survives the deceased, the death benefits shall be divided among them in equal shares.

(f) If the employee is not survived by legal beneficiaries, the death benefits shall be paid to the subsequent injury fund under Section 2.26 of this Act.

(g) For the purposes of this section:

(1) "Eligible spouse" means the surviving spouse of the deceased employee unless the spouse abandoned the employee for more than one year immediately preceding the death without good cause, as determined by the commission.

(2) "Eligible child" means a child of the deceased employee if the child is:

- (A) a minor;
- (B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age;
- (C) because of a physical or mental handicap, a dependent of the deceased employee at the time of death; or
- (D) a child who is otherwise a dependent of the deceased employee at the time of death.

(3) "Eligible grandchild" means a grandchild whose parent is not an eligible child and who is a dependent of the deceased employee.

SECTION 4.43. DURATION OF DEATH BENEFITS. (a) Entitlement to death benefits begins on the day after the date of death.

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by commission rule.

(c) A child who is eligible for death benefits because the child is a minor on the date of the employee's death is entitled to receive the benefits until the child attains the age of 18 years. If at age 18 the child is enrolled as a full-time student in an accredited educational institution, the child is entitled to continue to receive the benefits until the earliest of:

- (1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;
- (2) the date on which the child attains the age of 25 years; or
- (3) the date on which the child dies.

(d) A child who is eligible for death benefits because the child on the date of the employee's death is enrolled as a full-time student in an accredited educational institution is entitled to receive the benefits until the earliest of:

- (1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;
- (2) the date on which the child attains the age of 25 years; or
- (3) the date on which the child dies.

(e) A child who is eligible for death benefits because the child on the date of the employee's death is dependent because of a physical or mental handicap is entitled to receive the benefits until the earlier of:

- (1) the date on which the child is no longer handicapped; or
- (2) the date on which the child dies.



(f) A child who is otherwise eligible for death benefits as a dependent of the deceased employee is entitled to receive death benefits until the earlier of:

- (1) the death of the child; or
- (2) the expiration of 364 weeks of death benefit payments.

(g) An eligible grandchild who is a minor at the time of death is entitled to receive death benefits until the grandchild dies or ceases to be a minor.

(h) An eligible grandchild who is not a minor at the time of death is entitled to receive death benefits until the earlier of:

- (1) the death of the grandchild; or
- (2) the expiration of 364 weeks of death benefit payments.

(i) Any other person entitled to death benefits is entitled to receive death benefits until the earlier of:

- (1) the death of the beneficiary; or
- (2) the expiration of 364 weeks of death benefit payments.

SECTION 4.44. REDISTRIBUTION OF DEATH BENEFITS. (a) If a legal beneficiary dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with Sections 4.42 and 4.43 of this Act.

(b) If a spouse ceases to be eligible because of remarriage, the benefits payable to the remaining legal beneficiaries shall remain constant for 104 weeks, and then the spouse's share of benefits shall be redistributed in accordance with this section.

(c) If all legal beneficiaries, other than the subsequent injury fund, cease to be eligible and the insurance carrier has not made 364 weeks of full death benefit payments, including the remarriage payment, the insurance carrier shall pay the difference between the weeks paid and 364 weeks to the subsequent injury fund.

SECTION 4.45. EFFECT OF DISPUTE AS TO BENEFICIARY. (a) In all cases involving fatal injuries where the insurance carrier admits liability on all issues involved and tenders payments of maximum benefits in writing under this Act while the death benefits claim of such beneficiaries is pending before the commission, then no attorney's fee shall be allowed.

(b) On settlement of a case in which the insurance carrier admits liability for death benefits but a dispute exists as to the proper beneficiary or beneficiaries, the settlement shall be paid in periodic payments as provided by law, with a reasonable attorney's fee based on time and expenses not to exceed 25 percent of the settlement. The attorney's fee shall be paid periodically.

SECTION 4.46. BURIAL BENEFITS. (a) If death results from a compensable injury, the insurance carrier shall pay to the person who incurred liability for the costs of burial the lesser of:

- (1) the actual costs incurred for reasonable burial expenses; or
- (2) \$2,500.

(b) The insurance carrier shall also pay the reasonable cost of transporting the body if the employee died away from the usual place of employment, not to exceed the cost equivalent to transporting the body to the employee's usual place of employment.

SECTION 4.47. SUBSEQUENT INJURY FUND BENEFITS. If a subsequent compensable injury, together with the effects of a previous injury, results in a condition for which the injured employee is entitled to lifetime income benefits, the insurance carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed. The subsequent injury fund shall compensate the employee for the remainder of the lifetime income benefits to which the employee is entitled.

SECTION 4.48. AUTOPSY. If in a claim for death benefits based on an occupational disease an autopsy is necessary to determine the cause of death, the

commission may, after opportunity for hearing, order the legal beneficiaries of a deceased employee to permit an autopsy. A legal beneficiary is entitled to have a representative present at an autopsy ordered under this section. The commission shall require the insurance carrier to pay the costs of a procedure ordered under this section.

**[SECTIONS 4.49-4.60 reserved for expansion]**

**CHAPTER D. MEDICAL BENEFITS**

**SECTION 4.61. ENTITLEMENT TO MEDICAL BENEFITS.** (a) An injured employee is entitled to all health care reasonably required by the nature of the compensable injury as and when needed. Medical benefits are payable from the date of injury arising out of and in the course and scope of employment. The employee is specifically entitled to health care that:

(1) cures or relieves the effects naturally resulting from the compensable injury;

(2) promotes recovery; or

(3) enhances the ability of the employee to return to or retain employment.

(b) An insurance carrier's liability for medical benefits may not be limited or terminated by agreement or settlement.

**SECTION 4.62. RIGHT TO SELECT DOCTOR.** (a) The employee is entitled to the employee's initial choice of a doctor. An initial choice of a doctor made by the employer or the insurance carrier or medical treatment provided to an injured employee in an emergency situation does not constitute the employee's choice for purposes of this section. The employee may select one alternate doctor.

(b) A third or subsequent doctor selected by the employee is subject to the approval of the insurance carrier or the commission.

**SECTION 4.63. REFERRALS.** A referral made by a doctor selected by the employee that is medically reasonable and necessary does not constitute a change of doctors.

**SECTION 4.64. EXCEPTIONS.** (a) The limitations imposed by this chapter do not apply:

(1) if surgical or other procedures require ancillary medical services;

(2) when the employee desires a second opinion only on the appropriateness of the diagnosis or treatment;

(3) when there is a change of residence of the employee which necessitates a change in the doctor; or

(4) if the doctor dies, retires, or becomes otherwise unavailable or unable to provide medical care to the employee.

(b) A second or subsequent opinion obtained by an employee does not constitute the selection of an alternate doctor by that employee for purposes of Section 4.62 of this Act.

**SECTION 4.65. EFFECT OF EMPLOYEE NONCOMPLIANCE.** Except as otherwise provided by this chapter and after notice and an opportunity for hearing, the commission may relieve the insurance carrier of liability for health care furnished by a health care provider or any other person selected in a manner inconsistent with the requirements of this chapter.

**SECTION 4.66. REQUIRED REPORTS AND RECORDS BY HEALTH CARE PROVIDER.** (a) The commission by rule shall adopt reasonable requirements for reports and records required to be filed with the commission or provided to the injured employee, the employee's attorney, or the insurance carrier by health care providers.

(b) The commission by rule shall adopt reasonable requirements for reports and records to be made available to other health care providers to prevent unnecessary duplication of tests and examinations.

(c) The treating doctor shall be responsible for maintaining efficient utilization of health care.

**SECTION 4.67. SECOND OPINION ON SPINAL SURGERY.** (a) Except in situations of medical emergency, the insurance carrier is liable for medical costs related to spinal surgery only under the following conditions:

(1) the employee obtains a second opinion from a doctor approved by the insurance carrier or the commission before surgery and the doctor rendering the second opinion concurs with the treating doctor's recommendation;

(2) the insurance carrier waives the right to an examination or fails to request an examination not later than the 14th day after the date of the notification that surgery is recommended; or

(3) the commission determines that extenuating circumstances are present and orders payment for surgery.

(4) The ultimate fact finder determines that surgery is reasonable and necessary.

(b) The commission shall make rules necessary to ensure that an examination required under this section is performed without undue delay.

**SECTION 4.68. PAYMENT OF HEALTH CARE PROVIDER.** (a) Unless the amount of the payment or the entitlement to payment is disputed, an insurance carrier shall pay a fee charged by a health care provider not later than the 45th day after the date of receipt by the insurance carrier of a charge for services rendered by the provider.

(b) If the insurance carrier disputes the amount of payment and requests an audit of the services rendered, the insurance carrier shall pay 50 percent of the health care provider's statement of charges not later than the 45th day after the date of receipt of the statement.

(c) If the insurance carrier denies liability or entitlement to payment and an accident or health insurance company provides benefits to the employee for medical or other health care services, the right to recover that amount may be assigned by the employee to the accident or health insurance company.

(d) If an insurance carrier disputes the amount of payment or the entitlement to payment, the insurance carrier shall send to the commission, the health care provider, and the injured employee a report that sufficiently explains the reasons for reduction or denial of payment for health care services rendered to the employee and shall be entitled to a hearing as provided in Section 8.26(d) of this Act.

**SECTION 4.69. PHARMACEUTICAL SERVICES.** (a) In this section, "generically equivalent" has the meaning prescribed by Section 40, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes).

(b) A health care practitioner providing care to an employee under this chapter shall prescribe for the employee a generically equivalent drug unless the practitioner determines that the generically equivalent drug is medically inappropriate.

**SECTION 4.70. CONTINUATION OF MEDICAL BENEFITS.** (a) The liability of an insurance carrier for the provision of medical benefits is abated three years after the effective date of a settlement, order, or judgment concluding the claim.

(b) After the expiration of the period established under Subsection (a) of this section, the employee may reestablish entitlement to reasonable and necessary medical care but must show that the need for medical care is causally related to the compensable injury.

(c) This section does not apply when a claim is ultimately determined to be compensable under Section 4.25 of this Act or entitled to 401 weeks of income benefits for total incapacity, in which case medical benefits shall be provided for the lifetime of the employee.

SECTION 4.71. CUSTODIAL CARE. (a) An insurance carrier shall reimburse reasonable and necessary costs incurred by a family member who provides custodial care to an injured employee.

(b) For the purposes of this section, "custodial care" includes nursing services that do not require professional training.

The amendment was read.

(Senator Brooks in Chair)

Senator Montford moved to table the amendment.

(President in Chair)

The motion to table was lost by the following vote: Yeas 13, Nays 18.

Yeas: Armbrister, Bivins, Brown, Glasgow, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Sims, Tejada.

Nays: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Green, Haley, Johnson, Lyon, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Senator Uribe offered the following amendment to Floor Amendment No. 24:

**Floor Amendment No. 25**

Amend Floor Amendment No. 24 to S.B. 1 as follows:

(1) Amend Section 4.12 by striking "10" and inserting "20" (page 67, line 13).

The amendment was read.

Senator Montford moved to table the amendment.

The motion to table was lost by the following vote: Yeas 14, Nays 17.

Yeas: Armbrister, Bivins, Brooks, Brown, Glasgow, Haley, Harris, Henderson, Leedom, McFarland, Montford, Ratliff, Sims, Tejada.

Nays: Barrientos, Caperton, Carriker, Dickson, Edwards, Green, Johnson, Krier, Lyon, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Question recurring on the adoption of Floor Amendment No. 25, the amendment was adopted viva voce vote.

Senator Johnson offered the following amendment to Floor Amendment No. 24:

**Floor Amendment No. 26**

Amend Floor Amendment No. 24 to S.B. 1 by striking Section 4.24 and inserting the following:

SECTION 4.24. IMPAIRMENT GUIDELINES. The commission shall use the most current publication of the Guides to the Evaluation of Permanent Impairment by the American Medical Association as modified by the following factors applicable to the employee:

- (1) age;
- (2) education;
- (3) training;
- (4) previous work experience;
- (5) previous earnings;

(6) present occupation and earnings;  
(7) job function at time of injury;  
(8) likelihood of future suitable occupational change;  
(9) ability to obtain and retain suitable employment;  
(10) willingness to participate in reasonable physical and vocational rehabilitation programs and the success of those programs; and  
(11) other functions related to the activities of daily living (ADL); which modifications may permit up to 100% disability. Gender bias in the impairment guidelines shall be disregarded by adhering to the higher value in those instances of inequity.

(a) An impairment and disability committee is created to establish criteria and standards for the application of the modifiers. The committee shall include each of the following:

- (1) a physiatrist
- (2) a neurologist
- (3) a psychiatrist
- (4) an orthopedist
- (5) a family practitioner or internist
- (6) a neurosurgeon
- (7) an industrial medicine specialist
- (8) an occupational therapist
- (9) a vocational therapist

At least one of the above physicians shall be a doctor of osteopathy.

(b) The members of the committee shall be appointed jointly by the Lieutenant Governor and the Speaker of the House within 30 days of the passage of this legislation. The chairman of the committee shall be appointed by the Lieutenant Governor.

(c) Members of the committee are not entitled to remuneration but are entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the committee, not to exceed any established in the General Appropriations Act.

(d) The committee shall present formal standards to the Industrial Accident Board on October 1, 1990.

The amendment was read.

On motion of Senator Johnson and by unanimous consent, the amendment was withdrawn.

Senator Leedom offered the following amendment to Floor Amendment No. 24:

**Floor Amendment No. 27**

Amend Floor Amendment No. 24 to **S.B. 1** by adding Section 4.615 (page 87, line 5) to read as follows:

**SECTION 4.615. TREATMENT BY SPIRITUAL MEANS.** Nothing in this Act shall be construed to require an employee who in good faith relies on or is treated by prayer or spiritual means by a duly accredited practitioner of a well-recognized church to undergo any medical or surgical treatment nor shall the employee or the employee's dependents be deprived of any compensation payments to which the employee would have been entitled if medical or surgical treatment were employed. The employer or insurance carrier may pay for treatment by prayer or spiritual means.

The amendment was read and failed of adoption by the following vote: Yeas 10, Nays 21.

Yeas: Bivins, Brooks, Brown, Johnson, Krier, Leedom, Sims, Uribe, Washington, Zaffirini.

Nays: Armbrister, Barrientos, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Lyon, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Tejeda, Truan, Whitmire.

Senator Parker offered the following amendment to Floor Amendment No. 24:

**Floor Amendment No. 28**

Amend Floor Amendment No. 24 to S.B. 1, Article 4, Section 4.26 (e) by inserting on page 17, line 3, between “the” and “doctor’s” the word “treating” and deleting at lines 3 through 4 the phrase “certifying maximum medical improvement” and inserting after “report” the phrase, “assigning an impairment rating.”

The amendment was read.

On motion of Senator Parker and by unanimous consent, the amendment was withdrawn.

Senator Caperton offered the following amendment to Floor Amendment No. 24:

**Floor Amendment No. 29**

Amend Floor Amendment No. 24 to S.B. 1, on page 27, line 15, Sect. 4.64 by adding after the word “chapter” and before the word “do” the following language:

“in regards to the right of choosing a doctor.”

CAPERTON  
PARKER

The amendment was read and was adopted viva voce vote.

Senator Green offered the following amendment to Floor Amendment No. 24:

**Floor Amendment No. 30**

Amend Floor Amendment No. 24 to S.B. 1 as follows: On page 91, line 10, insert the following:

**“CHAPTER E. VOCATIONAL REHABILITATION PILOT PROGRAM**

**SECTION 4.81. DEFINITIONS. In this article:**

(1) “Qualified rehabilitation provider” means an individual who:  
(A) is a licensed professional counselor and holds the speciality designation of rehabilitation counselor, as recognized by the Texas State Board of Examiners of Professional Counselors; or

(B) is a certified rehabilitation counselor, certified rehabilitation registered nurse, or certified insurance rehabilitation specialist as licensed by the Commission on Certification of Rehabilitation Counselors; or

(C) a person employed by the Texas Rehabilitation Commission as a vocational rehabilitation counselor.

(2) “Qualified worker” means an individual who:

(A) because of a compensable injury or occupational disease, has incurred such reduction in pre-injury physical capacity that it appears likely the worker will be unlikely to return to the pre-injury job;

(B) reasonably can be expected to return to suitable gainful employment through the provision of vocational rehabilitation services; and

(C) meets criteria established by the commission for eligibility to participate in the pilot program.

(3) "Suitable gainful employment" means any employment that restores the injured worker, to the greatest extent possible, to the pre-injury level of income earned at the time of the injury modified to consider:

(A) the worker's employment qualifications, interests, incentives, pre-injury earnings, and probable future earning capacity;

(B) the nature and extent of the worker's injury; and

(C) the current and probable future condition of the labor market in the state.

(4) "Vocational rehabilitation services" means the services reasonably necessary to provide a qualified injured worker with the opportunity to return to suitable gainful employment. The term includes vocational and medical evaluation, counseling, job analysis, assistance, job placement assistance, and retraining, including on-the-job training.

#### SECTION 4.82. PILOT PROGRAM; PURPOSE; AUTHORITY TO CONTRACT; REQUIRED REPORTS.

(a) The Vocational Rehabilitation Pilot Program is created under the direction of the commission and shall be administered by the division of vocational rehabilitation of the commission.

(b) The general purposes of the pilot program are to evaluate and improve the commission's ability to identify qualified workers and to determine the cost-effectiveness of vocational rehabilitation services in restoring qualified workers to suitable gainful employment. The commission shall refer all qualified workers to qualified rehabilitation providers for vocational rehabilitation services and shall follow the progress of the group for the duration of the program in order to measure the following items:

(1) optimal time after injury for vocational rehabilitation intervention, if any;

(2) types of injuries requiring vocational rehabilitation, if any;

(3) cost benefit ratio of various vocational rehabilitation approaches;

(4) short-term recidivism rates; and

(5) characteristics of vocational rehabilitation successes and failure.

(c) The commission shall contract with private providers and enter into interagency contracts or adopt memoranda of understanding with the Texas Rehabilitation Commission as necessary to implement the pilot program.

(d) No funds shall be spent by the commission on the pilot program other than allocated by the General Appropriations Act.

(e) As appropriate, the commission shall attempt to administer the program with a reasonably equal division between private providers and the Texas Rehabilitation Commission.

(f) Nothing in this pilot program shall replace or supersede the Texas Rehabilitation Commission's provision of services to other workers' compensation claimants under Section 5.08 of this Act.

(g) The commission shall report to the governor and the legislature on the following schedule: the first report shall be filed no later than October 31, 1990; the second report shall be filed no later than October 31, 1992; and the final report shall be filed no later than August 31, 1993.

(h) The commission may release the worker's claim file to the worker's qualified rehabilitation provider.

**SECTION 4.83. ADVISORY COMMITTEE.**

(a) The Advisory Committee on Vocational Rehabilitation is composed of five members as follows:

- (1) one member must be a qualified rehabilitation provider employed in the public sector;
- (2) one member must be a qualified rehabilitation provider employed in the private sector;
- (3) one member must be an employer;
- (4) one member must be a wage earner; and
- (5) one member must be an employee of the commission within the vocational rehabilitation division.

(b) The members of the advisory committee serve for terms of two years. A member shall not serve more than two consecutive terms.

(c) A member of the advisory committee is not entitled to compensation for service on the advisory committee. A member is entitled to reimbursement for reasonable and necessary expenses incurred in performing duties as a member of the advisory committee, subject to any limitation in the General Appropriations Act.

(d) The advisory committee shall advise the commission on vocational rehabilitation issues and may recommend to the commission the adoption of rules, policies, and procedures relating to the provision of vocational rehabilitation services.

**SECTION 4.84. IDENTIFICATION OF QUALIFIED WORKERS.**

(a) The commission shall develop procedures for identifying, selecting and referring potential qualified workers for vocational rehabilitation services.

(b) The providers participating in the program shall screen the referrals to identify and establish a rehabilitation plan for each qualified worker. The objective of the rehabilitation plan is to return the workers to suitable gainful employment, according to the following orders of priorities:

- (1) the pre-injury job with the pre-injury employer;
- (2) a modification of the pre-injury job with the pre-injury employer, including transitional return to work;
- (3) a new job with the pre-injury employer in keeping with any limitations or restrictions;
- (4) a modification of the pre-injury job with a new employer;
- (5) a new job with a new employer based on transferable skills;
- (6) a new job with a new employer involving on-the-job training; and
- (7) short-term retraining and job placement.

(c) Participation in this pilot program is voluntary and shall not affect the injured workers' entitlement to benefits otherwise provided by this Act. The commission may order the carrier to pay total disability income benefits to participants in this program.

**SECTION 4.85. DURATION OF SERVICES.** Vocational rehabilitation services provided to qualified worker under this pilot program may not be provided for longer than 26 weeks. If the commission determines that the worker needs additional rehabilitation services, the commission is authorized to extend the services for not longer than an additional 13 weeks.

**SECTION 4.86. PAYMENT OF JOB MODIFICATION COSTS.** Modification of the injured workers' previous job is recognized as a desirable method of returning the injured worker to suitable gainful employment. In order to assist employers in meeting the costs of job modification and to encourage employers to modify jobs to accommodate retraining or hiring workers with disabilities resulting from work-related injuries, the commission is authorized to reimburse employers for job modification costs in an amount not to exceed \$1,000 per worker job modification. Funds shall be taken from the subsequent injury fund.



SECTION 4.87. EXPIRATION DATE. This chapter expires August 31, 1993."

The amendment was read and was adopted viva voce vote.

Senator Parker offered the following amendment to Floor Amendment No. 24:

**Floor Amendment No. 31**

Amend Floor Amendment No. 24 to S.B. 1, Article 4, Section 4.26(e) by deleting after the word "which" the phrase, "the insurance carrier receives the doctor's report certifying maximum medical improvement" and inserting after the word "which" the phrase, "the employee is no longer entitled to temporary income benefits."

The amendment was read and was adopted viva voce vote.

Question recurring on the adoption of Floor Amendment No. 24 as amended, the amendment was adopted viva voce vote.

**RECORD OF VOTES**

Senators Bivins, Glasgow and Sims asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 24 as amended.

Senator Caperton offered the following amendment to the bill:

**Floor Amendment No. 32**

Amend S.B. 1 by striking Article 6 in its entirety and substituting in lieu thereof the following:

**ARTICLE 6. ADJUDICATION OF DISPUTES  
CHAPTER A. GENERAL PROVISIONS**

SECTION 6.01. APPLICATION OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. (a) Except as otherwise provided by this article, the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) does not apply to any proceeding conducted under this article.

(b) Each proceeding before the commission to determine the liability of an insurance carrier for compensation for an injury or death under this Act is governed by this article.

(c) Process and procedure in all proceedings shall be as summary as may be under this law to promote the efficient and cost-effective disposition of claims.

SECTION 6.02. PERSONNEL, DIVISION OF HEARINGS. (a) The division of hearings shall conduct benefit review conferences and contested case hearings.

(b) Benefit review officers shall conduct benefit review conferences. The commission shall institute and maintain an education and training program for benefit review officers who must be employees of the commission. The officers shall be trained in the principles and procedures of dispute mediation, and the commission is authorized and directed to consult or enter into contracts with the Federal Mediation and Conciliation Service or other appropriate organization to accomplish this purpose.

(c) Hearing officers shall conduct contested case hearings. Hearing officers shall be licensed to practice law in Texas.

SECTION 6.03. VENUE FOR CERTAIN ADMINISTRATIVE PROCEEDINGS. Unless the commission determines that good cause exists for the selection of a different location, a benefit review conference or a contested case hearing may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

**SECTION 6.04. REPRESENTATION AT ADMINISTRATIVE PROCEEDINGS.** A claimant may be represented at a benefit review conference or a contested case hearing by an attorney or may be assisted by an individual of the claimant's choice who does not work for an attorney or receive a fee. An employee of an attorney may represent a claimant if that employee is a relative of the claimant and no fee is received. An insurance carrier may be represented by an attorney or adjuster.

[Sections 6.05-6.10 reserved for expansion]

**CHAPTER B. BENEFIT REVIEW CONFERENCES**

**SECTION 6.11. PURPOSE OF BENEFIT REVIEW CONFERENCE.** A benefit review conference is a nonadversarial, informal dispute resolution proceeding designed to:

(1) explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights;

(2) discuss the facts of the claim, review available information in order to evaluate the claim, and delineate the disputed issues; and

(3) mediate and resolve disputed issues by mutual agreement of the parties in accordance with this Act and the policies of the commission.

**SECTION 6.12. REQUEST FOR BENEFIT REVIEW CONFERENCE.** (a) On receipt of a request from a party, or on its own motion, the commission may direct the parties to a disputed workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim.

(b) At the time a benefit review conference is scheduled, the commission shall schedule a contested case hearing to be held within 60 days of the benefit review conference if the disputed issues are not resolved at the benefit review conference.

(c) The commission by rule shall adopt guidelines relating to claims that do not require a benefit review conference and may proceed directly to a contested case hearing. Except as otherwise provided by law or commission rule, unless a benefit review conference is conducted as provided by this section the parties are not entitled to a contested case hearing on the claim.

(d) The commission by rule shall provide for expedited proceedings in cases in which compensability or liability for essential medical treatment is in dispute.

(e) The commission shall schedule a benefit review conference within 30 days after the commission receives a request from a party and written notice of the benefit review conference shall be sent by the commission to the parties to the claim and the employer. A party who fails to attend the conference without good cause as determined by the benefit review officer commits a Class D administrative violation. When a benefit review conference is scheduled, unless the benefit review officer determines that good cause exists to reschedule the benefit review conference, the benefit review conference shall be conducted even though a party fails to attend.

**SECTION 6.13. DUTIES OF THE BENEFIT REVIEW OFFICER.** (a) The benefit review officer shall:

(1) mediate disputes between the parties and assist in the adjustment of the claim consistent with this Act and the policies of the commission;

(2) thoroughly inform all parties of their rights and responsibilities under this Act, especially in cases in which the employee is not represented by an attorney or other representative; and

(3) ensure that all documents and information relating to the employee's wages, medical condition, and any other information pertinent to the resolution of disputed issues are contained in the claim file at the conference, especially in cases in which the employee is not represented by an attorney or other representative.

(b) A benefit review officer may reschedule a benefit review conference if the benefit review officer determines that any available information pertinent to the resolution of disputed issues is not produced at the benefit review conference.

(c) The benefit review officer may not take testimony but may direct questions to an employee, an employer, or a representative of an insurance carrier to supplement or clarify information in a claim file.

(d) The benefit review officer may not make a formal record.

SECTION 6.14. PROCEDURES. (a) The commission shall promulgate rules for conducting benefit review conferences.

(b) A benefit review conference is not subject to common law or statutory rules of evidence or procedure.

(c) If a party has not requested a benefit review conference, an employer may request a benefit review conference only to contest compensability. A benefit review officer shall grant an employer a benefit review conference to contest compensability if the employer's request is accompanied by a sworn statement setting forth sufficient evidence to establish a prima facie case that the injury in question is not compensable. An employer who elects to request a benefit review conference shall request the conference not later than the 20th day after the date on which the insurance carrier accepts compensability. An employer who frivolously requests a benefit review conference commits a Class C administrative violation.

SECTION 6.15. RESOLUTION AT A BENEFIT REVIEW CONFERENCE. (a) A dispute may be resolved either in whole or in part at the benefit review conference. If the conference results in the resolution of some of the disputed issues by mutual agreement or in a settlement, the benefit review officer shall reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party shall sign the agreement or settlement. A settlement must be approved by the director of the division of hearings in accordance with Section 4.33 of this Act and takes effect on the date it is approved by that director.

(b) An agreement signed pursuant to this section shall be binding on the insurance carrier through the final conclusion of all matters relating to the claim, unless the commission or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, shall relieve the insurance carrier of the effect of such agreement.

(c) An agreement signed pursuant to this section shall be binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier. If the claimant is not represented by an attorney, such agreement shall remain binding on the claimant through the final conclusion of all matters relating to the claim while the claim is pending before the commission, unless the commission for good cause shall relieve the claimant of the effect of such agreement.

(d) If issues remain unresolved at the conclusion of the benefit review conference, the benefit review officer shall require the parties formally to state the final demand of the claimant and the final offer of the carrier. If the claimant is unrepresented, the officer shall assist the claimant in evaluating the claim and formulating a final demand.

(e) If the dispute is not entirely resolved at the benefit review conference, the benefit review officer shall prepare a written report in the presence of the parties that details each issue that is not settled at the conference. The report must also include:

- (1) a statement of each resolved issue;
- (2) a statement of each issue raised but not resolved;
- (3) a statement of the position of the parties regarding each unresolved issue;
- (4) the officer's recommendation regarding each unresolved issue;

(5) the officer's recommendations regarding the payment or denial of benefits;

(6) a statement of what, if any, interlocutory orders were entered pursuant to Subsections (e) and (f) of this section; and

(7) a statement of the procedures required to request a contested case hearing and a complete explanation of the rights of the parties to subsequent review of the determinations made in those proceedings.

(f) If a benefit review officer recommends that benefits be paid or not paid, the benefit review officer may issue an interlocutory order to pay or not pay the benefits. The subsequent injury fund shall reimburse an insurance carrier for any overpayments of benefits made pursuant to an order entered under this subsection if that order is reversed or modified at a contested case hearing.

(g) If there is a dispute as to which of two or more insurance carriers is liable for compensation for one or more compensable injuries, the benefit review officer may issue an interlocutory order directing each insurance carrier to pay a proportionate share of benefits due pending a final decision on liability. The proportionate share shall be determined by dividing the compensation due by the number of insurance carriers involved.

(h) On final determination of liability, any insurance carrier determined not to be liable for the payment of benefits is entitled to reimbursement for the share paid by the insurance carrier from any insurance carrier determined to be liable.

(i) The benefit review officer shall complete, sign, and deliver to the parties and the employer a copy of the report immediately at the conclusion of the benefit review conference. The benefit review officer shall file the report with the director of the division of hearings not later than seven days after the date on which the benefit review conference is concluded.

(j) On a separate form, the benefit review officer shall note the final demand of the claimant and the final offer of the insurance carrier. The completed form will be included in the claim file maintained by the commission, but shall be admissible only in an arbitration conducted under Chapter D of this article.

**SECTION 6.16. NOTIFICATION OF RIGHTS.** (a) At the conclusion of the benefit review conference at which the case is not wholly resolved and in which the claimant is not represented by an attorney, it shall be the duty and obligation of the benefit review officer to explain fully and completely to the employee or legal beneficiary, both orally and by giving notice in writing, the employee's or legal beneficiary's right to proceed to binding arbitration or to a contested case hearing and eventually judicial review.

(b) The benefit review officer shall specifically explain to the employee or legal beneficiary:

(1) the difference between binding arbitration and a contested case hearing;

(2) that if the employee or legal beneficiary wishes to elect binding arbitration, the employee or legal beneficiary must affirmatively notify the commission within 15 days of the date on which the benefit review conference is concluded; and

(3) that a contested case hearing has already been scheduled to occur if the parties do not elect arbitration.

**SECTION 6.17. ELECTION OF REMEDIES.** (a) If an employee or legal beneficiary elects to proceed with binding arbitration, the employee or legal beneficiary must file an election with the commission not later than the 15th day after the date on which the benefit review conference concludes.

(b) If an employee or legal beneficiary elects not to proceed with binding arbitration with the commission, the commission shall direct the parties to meet in a contested case hearing scheduled in accordance with Section 6.12(b) of this Act.

[Sections 6.18-6.20 reserved for expansion]

#### CHAPTER C. CONTESTED CASE HEARING

SECTION 6.21. CONTESTED CASE HEARING. (a) A party to a claim for which a benefit review conference is held or a party eligible to proceed directly to a contested case hearing as provided by Section 6.12(c) of this Act is entitled to a contested case hearing.

(b) The commission shall schedule a contested case hearing in accordance with Section 6.12(b) or (c) of this Act.

(c) A written report by a party for a continuance of the contested case hearing to another date must be directed to the commission. The commission may grant a continuance only if the commission determines that there is good cause for the continuance.

(d) The commission shall adopt rules governing procedures under which contested case hearings are conducted.

SECTION 6.22. APPLICATION OF THE ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) shall apply to the contested case hearing to the extent that the commission finds it appropriate except that Sections 14 through 23 shall not apply in any way whatsoever.

SECTION 6.23. DISCOVERY IN CONTESTED CASE HEARINGS. (a) Except as provided in Subsection (f) of this section, discovery shall be limited to:

(1) depositions on written questions to any health care provider who provided medical treatment relating to the claim; and

(2) interrogatories as prescribed by the commission.

(b) The commission shall by rule prescribe standard form sets of interrogatories to elicit information from claimants and insurance carriers. These interrogatories shall be answered by each party and served on the opposing party within a time to be prescribed by commission rule, unless the parties agree otherwise.

(c) Such discovery shall not seek information which may readily be derived from the documentary evidence described in Subsection (d) of this section, and the answers need not duplicate such information.

(d) Within a time to be prescribed by commission rule, the parties shall exchange:

(1) all medical reports and reports of expert witnesses who will be called to testify at the hearing;

(2) all medical records;

(3) any witness statements;

(4) the identity and location of any witness known to the parties to have knowledge of relevant facts; and

(5) all photographs or other documents which a party intends to offer into evidence at the hearing.

(e) A party who fails to disclose information known to that party or documents which are in existence and in the possession, custody, or control of that party at the time when disclosure is required by this section may not introduce such evidence at any subsequent proceeding on the claim unless good cause is shown for not having disclosed such information or documents under this section.

(f) For good cause shown, a party may obtain permission from the hearing officer to conduct additional discovery as necessary.

SECTION 6.24. CONTESTED CASE HEARING PROCEDURES. (a) At the contested case hearing the hearing officer shall:

- (1) swear witnesses;
- (2) receive testimony;
- (3) allow examination and cross-examination of witnesses;
- (4) accept documents and other tangible evidence; and
- (5) allow the presentation of evidence by affidavit.

(b) The hearing officer shall ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made. The hearing officer may permit the use of summary procedures, if appropriate, including witness statements, summaries, and similar measures to expedite the proceedings.

(c) The proceedings of the contested case hearing shall be electronically recorded. A party may request a transcript of the proceeding and shall pay the reasonable cost of the transcription.

(d) A party may request that the proceedings of the contested case hearing be recorded by a court reporter. The party making the request shall bear the cost.

(e) The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence, and conformity to legal rules of evidence is not necessary; however, any written stipulations and agreements filed in the record or oral stipulations and agreements preserved in the record made between the parties shall be final and binding. The hearing officer may accept written statements signed by a witness and shall accept all written reports signed by a health care provider.

(f) All parties are required to attend the contested case hearing. A party who does not attend a contested case hearing without good cause as determined by the hearing officer commits a Class C administrative violation.

(g) The hearing officer shall issue a written decision that includes: (1) findings of fact and conclusions of law; (2) a determination of whether benefits are due; and (3) an award of benefits due. On a form to be prescribed and promulgated by the commission, the hearing officer shall issue a separate written decision with respect to attorney's fees and any matter relating to such fees, and no part of this decision or form shall be made known to a jury in any judicial review of an award, including an appeal. The commission shall by rule prescribe the times within which the hearing officer shall file the decisions with the division. The division shall send a copy of the decision to each party.

(h) The decision of the hearing officer regarding benefits is final in the absence of a timely appeal by a party.

(i) Except in regard to procedural matters, a party and a hearing officer may not communicate outside the contested case hearing unless the communication is in writing with copies provided to all parties.

(j) A claim may be resolved either in whole or in part at the contested case hearing. If the hearing results in a settlement, the hearing officer shall reduce the settlement to writing. The hearing officer and each party shall sign the settlement, and the hearing officer shall file the signed settlement with the director of the division of hearings not later than three days after the date on which the contested case hearing is concluded. The director of the division of hearings shall, in accordance with the provisions of this Act, approve or reject any settlement not later than seven days after receipt of the settlement. The director of the division of hearings shall also furnish a copy of the settlement, indicating his approval or rejection, to the parties within the same time period. A settlement is not effective until approved by the director of the division of hearings.

[Sections 6.25-6.40 reserved for expansion]

#### CHAPTER D. ARBITRATION

SECTION 6.41. ELECTION OF ARBITRATION. (a) If a claim remains unresolved after the conclusion of a conference, the employee or legal beneficiary may elect that the parties engage in binding arbitration in the manner provided by

this chapter. Within five days of receiving notice of the election to proceed to binding arbitration, the carrier may consent to the election. If the carrier does not consent, it shall immediately notify the commission and the employee or legal beneficiary.

(b) Binding arbitration is an alternative to judicial resolution. Any election to engage in arbitration under this chapter is binding and irrevocable.

SECTION 6.42. PURPOSES OF ARBITRATION. The purposes of arbitration are:

(1) to enter into formal, binding stipulations on issues on which the parties agree;

(2) to resolve issues on which the parties disagree; and

(3) to render a final award with respect to all issues in dispute.

SECTION 6.43. ARBITRATORS. (a) The commission shall approve regional lists of consenting arbitrators.

(b) A person who is a resident of this state and who is either a member of the National Academy of Arbitrators or is on an approved list of the American Arbitration Association or Federal Mediation and Conciliation Service shall be considered qualified for the lists approved by the commission under Subsection (a) of this section and, if the person consents, shall be included in the lists by the commission.

(c) A person who does not meet the qualifications set out in Subsection (b) of this section may be certified for inclusion as an approved arbitrator on the lists approved by the commission under Subsection (a) of this section if the person meets qualifications established by the commission for inclusion on the lists and is approved by an affirmative vote of the commission member representing employers and the commission member representing wage earners. The commission by rule shall adopt qualifications for an arbitrator under this subsection. An arbitrator may not be an employee of the commission.

(d) The commission shall review the lists of consenting arbitrators annually. An arbitrator shall be removed from the approved lists unless, on review, the arbitrator receives the affirmative vote described in Subsection (c) of this section.

(e) Each regional list shall be initially prepared in a random name order and subsequent additions to each list shall be added in consecutive chronological order. The arbitrator for a particular case shall be assigned by the commission by selection of the next name after the previous case's selection in consecutive order. The commission may not change the order of names; however, once each arbitrator on the list has been assigned to a case, the names shall be randomly reordered. Except in cases that have proceeded to judicial resolution, the commission shall assign an arbitrator to a pending case not earlier than 31 days nor later than 45 days after the date on which the mediation conference is concluded.

(f) When an arbitrator has been assigned to a case under Subsection (e) of this section, the parties shall be notified immediately. A party is entitled, in its sole discretion, to reject the arbitrator. If a party rejects an arbitrator, another arbitrator shall be assigned within three days of the rejection. Each party is entitled to one rejection for each case, and, when all parties have exercised their right of rejection or when no rejection is registered, the assignment is final. Any rejection shall be made within three days of notification of the arbitrator assignment.

(g) If an assigned arbitrator is unable to schedule a hearing to be held on or before the 30th day after the date of the arbitrator's assignment, the commission shall appoint the next arbitrator on the applicable list. Each party is entitled to reject the arbitrator in the manner provided under Subsection (f) of this section.

(h) The commission's lists are strictly confidential and not subject to disclosure under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). The lists may not

be revealed by any commission employee to any individual who is not a member or employee of the commission. The lists are exempt from discovery in civil litigation unless the party seeking the discovery establishes reasonable cause to believe that a violation of the requirements of this section occurred and that the violation is relevant to the issues in dispute.

**SECTION 6.44. ARBITRATION PROCEDURE.** (a) The arbitrator shall schedule an arbitration to be held not later than the 30th day after the date of the arbitrator's assignment and shall notify the parties and the commission of the scheduled date.

(b) A request by a party for a continuance of the hearing to another date must be directed to the commission. The commission may grant a continuance only if the commission determines, giving due regard to the availability of the arbitrator, that there is good cause for the continuance. If the commission grants a continuance under this subsection, the date of the rescheduled hearing may not be later than the 30th day after the date of the original hearing. Notwithstanding the existence of good cause, the commission may not grant more than one continuance to each party.

(c) The commission shall adopt rules for arbitration consistent with generally recognized arbitration principles and procedures.

(d) Each party shall attend the arbitration prepared to set forth in detail its position on unresolved issues and the issues with respect to which it is prepared to stipulate. A party who does not attend the conference commits a Class C administrative violation unless the arbitrator determines that the party had good cause not to attend.

(e) Not later than the seventh day before an arbitration conference, the parties shall exchange and file with the arbitrator all medical reports and other documentary evidence pertinent to the resolution of the claim, not previously exchanged or filed, together with information as to their proposed resolution of the disputed issues. A party who fails to comply with the requirements of this subsection without good cause, as determined by the arbitrator, commits a Class C administrative violation.

(f) An arbitrator shall protect the interests of all parties, ensure that all relevant evidence has been disclosed to the arbitrator and to all parties, and render an award consistent with the terms of this Act.

(g) A claimant may be represented at arbitration by an attorney or may be assisted by an individual of the claimant's choice who does not work for an attorney or receive a fee. An insurance carrier may be represented by an attorney or adjuster. An employer may present relevant evidence if an affidavit setting forth such evidence has been filed at least 10 days prior to arbitration.

(h) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by a party. An official stenographic record may not be made of the hearing, but any party wishing to record the hearing by stenographic or electronic means may do so and is responsible for the expenses of making the record.

(i) The parties may offer evidence as they desire and shall produce additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator is the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence is not necessary. The parties may present such closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

(j) Except in regard to procedural matters, a party and an arbitrator may not communicate outside the arbitration conference unless the communication is in writing with copies provided to all parties.

(k) The commission shall bear the expenses and fees of arbitration under this chapter.



**SECTION 6.45. AWARD AT ARBITRATION.** (a) Not later than seven days after the last day of arbitration, the arbitrator shall enter the final award. The arbitrator shall base the award on the facts established at arbitration, including stipulations of the parties, and the law as properly applied to those facts. The award must be in an amount equal to either the final demand of the claimant or the final offer of the carrier.

(b) The award must:

- (1) be in writing;
- (2) be signed and dated by the arbitrator; and
- (3) include a statement of the arbitrator's decision on the contested issues and the parties' stipulations on uncontested issues.

(c) The arbitrator shall file a copy of the award as part of the permanent claim file at the commission and shall notify the parties in writing of the decision.

(d) An award entered under this section is final and binding on all parties. Except as provided in Section 6.05 of this Act, there is no right of appeal.

(e) The commission shall adopt the arbitrator's award as a final order of the commission.

**SECTION 6.46. MODIFICATION BASED ON CLERICAL ERROR.** For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days from the date of the award.

**SECTION 6.47. VACATING AN AWARD.** (a) On application of an aggrieved party, a court of competent jurisdiction shall vacate an arbitrator's award on a finding that:

- (1) the award was procured by corruption, fraud, or misrepresentation;
- (2) the decision of the arbitrator was arbitrary and capricious; or
- (3) the arbitration award was outside the jurisdiction of the commission.

(b) If an award is vacated, the case shall be remanded to the commission for another arbitration proceeding.

(c) A suit to vacate an award must be filed not later than the 30th day after the date of the award or not later than the 30th day after the date the appealing party knew or should have known of a basis for suit under this section. Venue for suit is in the county in which the arbitration was conducted.

(d) In a suit to vacate an award made by the arbitrator, any determination, including findings of fact or conclusions of law, shall be made exclusively by the court.

[Sections 6.48-6.60 reserved for expansion]

#### **CHAPTER E. JUDICIAL REVIEW OF COMMISSION DECISIONS**

**SECTION 6.61. JUDICIAL REVIEW; PROCEDURES.** (a) A party that has exhausted its administrative remedies under this Act and is aggrieved by a final decision of the contested case hearing officer may seek judicial review under this chapter by filing suit not later than the 30th day after the date on which the decision of the hearing officer was received from the division of hearings.

(b) The party must bring suit to appeal the decision by filing a petition with the appropriate court in:

- (1) the county where the injury occurred; or
  - (2) the county where the employee resided at the time of the injury;
- or
- (3) the county where the employee resided at the time of death if the employee is deceased.

(c) In the case of an occupational disease, the petition shall be filed with the appropriate court in:

(1) the county where the employee resided on the date disability began; or

(2) any county agreed to by the parties.

(d) A copy of the petition shall be simultaneously filed with the court and the commission and served on the opposing party or parties.

(e) On timely motion initiated by the executive director, the commission shall be permitted to intervene in any judicial proceeding under this chapter.

**SECTION 6.62. TRIAL OF WORKERS' COMPENSATION CLAIM.** (a) Regardless of which party files suit, the court shall determine the disputed issues in a trial pursuant to the Texas Rules of Civil Procedure and the Texas Rules of Civil Evidence, and the burden of proof shall be on the party claiming compensation. Evidence shall be adduced as in other trials, and either party shall be entitled to a jury for determination of disputed issues of fact.

(b) The commission shall furnish any interested party in the claim with a certified copy of the notice of the employer securing compensation with the insurance carrier filed with the commission. The certified copy of the notice shall be admissible in evidence on trial of the claim pending and shall be prima facie proof of the facts stated in the notice unless the facts are denied under oath by the opposing party.

(c) A final agreement or stipulation made between the parties at the benefit review conference or the contested case hearing is final and binding during the trial of the claim as a judicial admission unless the court, for good cause, relieves a party from the binding effect of such agreement or stipulation. In no event shall such agreements or stipulations be withdrawn less than 30 days prior to trial. In a determination of good cause under this section, the court shall consider whether an employee or legal beneficiary was represented by an attorney at the time any agreement or stipulation was made.

(d) The commission, on payment of a reasonable fee, shall make available to the parties a certified copy of the commission's record, and all facts and evidence it contains are admissible to the extent allowed under the Texas Rules of Civil Evidence.

(e) Where the contested case officer award is that the claimant take nothing, the court shall schedule a pretrial hearing on the issue of whether the award is supported by evidence sufficient to justify its admission in trial. In all other cases, the amount of the award shall be admissible in evidence at the trial and is to be given such weight as the trier of fact may determine to be appropriate relative to any disputed issue of fact.

(f) Only an issue raised and on which evidence was presented at a contested case hearing may be raised at trial. An issue that was resolved in an earlier proceeding or that was not raised and on which no evidence was presented at a contested case hearing may be reopened only on a showing that:

(1) evidence regarding that issue has come to a party's knowledge since the contested case hearing;

(2) the evidence could not reasonably have been discovered earlier with due diligence by the party;

(3) the evidence is not cumulative of other evidence; and

(4) the evidence is so material that it would probably produce a different result if it is admitted into evidence at the trial.

**SECTION 6.63. ATTORNEYS' FEES REGULATED BY THE COURT.**

(a) For representing the interest of any employee or legal beneficiary in any matter carried from the commission into the courts, an attorney representing the interest may contract with any employee or legal beneficiary under this Act for an attorney's fee for the representation, not to exceed 25 percent of the amount recovered, the fee for services so rendered to be fixed and allowed by the trial court in which the matter may be heard and determined.

(b) In fixing and allowing the attorney's fee, the court must take into consideration the benefit accruing to the claimant as a result of the attorney's services. Attorneys' fees, other than the amount which the commission may have approved, may not be allowed for representing an employee or legal beneficiary in the trial court unless the court finds that benefits have accrued to the employee or legal beneficiary because of the representation, and then the attorney's fee shall be allowed only on a basis of services performed and benefits accruing to the employee or legal beneficiary.

**SECTION 6.64. COURT-APPROVED SETTLEMENTS.** On the application of either party to a suit to set aside the award of the commission, the court may approve a settlement agreement presented at any time before the jury has returned in the trial of the suit. In approving the settlement agreement, the court may either conduct a hearing on the agreement or approve it without a hearing if the claimant submits a sworn affidavit acknowledging his agreement to settle the cause of action and evidencing his full understanding of all the provisions of the settlement agreement.

The amendment was read.

**(Senator Harris in Chair)**

**(President in Chair)**

Senator Glasgow moved to table the amendment.

The motion to table was lost by the following vote: Yeas 14, Nays 17.

Yeas: Armbrister, Bivins, Brown, Glasgow, Haley, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Sims, Tejada.

Nays: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Green, Johnson, Lyon, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Question recurring on the adoption of Floor Amendment No. 32, the amendment was adopted viva voce vote.

#### **RECORD OF VOTE**

Senator Brown asked to be recorded as voting "Nay" on the adoption of the amendment.

Senator Johnson offered the following amendment to the bill:

#### **Floor Amendment No. 33**

Amend S.B. 1, Section 7.05, by adding the word "certified" before "training programs," on page 122, line 26; and by adding the word "certified" before "training program" on page 123, line 7.

The amendment was read and was adopted viva voce vote.

Senator Lyon offered the following amendment to the bill:

#### **Floor Amendment No. 34**

Amend S.B. 1 on page 137, by inserting a new subsection (9) under Section 8.23 (b) to read as follows:

"(9) a medical equipment supplier."

The amendment was read.

On motion of Senator Lyon and by unanimous consent, the amendment was withdrawn.

Senator Green offered the following amendment to the bill:

**Floor Amendment No. 35**

Amend **S.B. 1** as follows:

On page 142, line 21, insert before “conduct”: “establish an investigation unit to”.

On page 142, line 22, insert after “rules”: “, with particular emphasis on violations of Section 10.05”.

The amendment was read and was adopted viva voce vote.

Senator Lyon offered the following amendment to the bill:

**Floor Amendment No. 36**

Amend **S.B. 1** on page 137, by inserting a new subsection (9) under Section 8.23 (b) to read as follows:

“(9) a medical equipment supplier.”

The amendment was read and was adopted viva voce vote.

Senator Uribe offered the following amendment to the bill:

**Floor Amendment No. 37**

Amend **S.B. 1** by striking Section 10.04 and renumbering the following subsections accordingly.

The amendment was read.

Senator Montford moved to table the amendment.

The motion to table was lost by the following vote: Yeas 14, Nays 17.

Yeas: Armbrister, Bivins, Brown, Haley, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Santiesteban, Sims, Tejada.

Nays: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Johnson, Lyon, Parker, Parmer, Truan, Uribe, Washington, Whitmire, Zaffirini.

Question recurring on the adoption of the amendment, the amendment was adopted viva voce vote.

Senator Krier offered the following amendment to the bill:

**Floor Amendment No. 38**

Amend **S.B. 1** by adding the following section on page 155, line 23 to read as follows:

Section 10.421. CERTAIN CAUSES OF ACTION PRECLUDED AGAINST GOVERNMENTAL ENTITIES. This Act does not create a cause of action against a governmental entity for exemplary damages for breach of the duty of good faith and fair dealing.

The amendment was read.

On motion of Senator Krier and by unanimous consent, the amendment was withdrawn.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 39**

On page 156, line 17, insert a new paragraph 7 to read as follows:

(7) drugs in the workplace, prioritizing public and private establishments in which drug abuse could have dire consequences on the public, and including a survey designed to identify future needs and current efforts of private and public employers to counterattack drug abuse and its effects in the workplace.

On page 156, renumber the remaining paragraphs as needed.

The amendment was read and was adopted viva voce vote.

Senator Johnson offered the following amendment to the bill:

**Floor Amendment No. 40**

Amend **S.B. 1** by adding a new Article 12 as follows, and renumbering following Articles accordingly:

SECTION 1. Subchapter H, Chapter 5, Insurance Code, is amended by adding Article 5.80 to read as follows:

Art. 5.80. TEXAS WORKERS' COMPENSATION INSURANCE FUND

Sec. 1. DEFINITIONS. In this article:

(1) "Fund" means the Texas workers' compensation insurance fund.

(2) "Board" means the Texas Workers' Compensation Insurance Fund Board.

(3) "Fund manager" means the manager of the fund.

(4) "Insurance fund" means the special fund created under Section 9 of this article.

Sec. 2. TEXAS WORKERS' COMPENSATION INSURANCE FUND BOARD. (a) The Texas Workers' Compensation Insurance Fund Board is created as a state agency. The board is composed of three members appointed by the governor as follows:

(1) one member who is a representative of labor;

(2) one member who is a representative of employers; and

(3) one member who is a representative of the general public.

(b) Members of the board serve for staggered terms of six years with the term of one member expiring February 1 of each odd-numbered year.

(c) The governor shall fill a vacancy on the board for the unexpired term by appointment of a person with the same qualifications required of the person who held the position being filled.

(d) Members of the board are entitled to compensation as provided by the fund's annual budget.

(e) The governor shall designate one member of the board to serve as chairman for a term of two years beginning on February 1 of each odd-numbered year.

(f) The board shall hold meetings at the call of the chairman and at times established by board rule.

(g) A majority of the board members constitutes a quorum.

(h) The board shall maintain its principal office in Austin, Texas.

Sec. 3. CREATION OF FUND. (a) The Texas workers' compensation insurance fund is created to accept applications for and to deliver or issue for delivery in this state workers' compensation insurance and to transact a workers' compensation insurance business to the same extent as any other insurer doing a workers' compensation insurance business in this state.

(b) The fund is governed by the board.

Sec. 4. POWERS AND DUTIES OF BOARD. (a) In addition to other duties that may be provided by this article, the board shall:

(1) enter into and approve contracts other than workers' compensation insurance contracts on behalf of the fund;

(2) establish rates for workers' compensation insurance issued by the fund;

(3) receive service of summons on behalf of the fund; and

(4) appoint and supervise the activities of the fund manager.

(b) In addition to other authority provided by this article, the board may:

(1) adopt necessary rules;

(2) delegate specific responsibilities to the fund manager;

(3) develop a general plan of operation to assure the orderly management and operation of the fund; and

(4) exercise any other authority necessary to conduct an insurance business for the fund.

Sec. 5. FUND MANAGER. (a) The board shall appoint a person to serve as fund manager who shall serve at the pleasure of the board.

(b) The fund manager shall manage and conduct the affairs of the fund under the general supervision of the board and shall perform duties provided by this article and directed by the board.

(c) In addition to any other duties provided by this article or by the board, the fund manager shall:

(1) receive and pass on applications for workers' compensation insurance and issue to applicants who are eligible workers' compensation insurance provided by the fund;

(2) negotiate contracts other than workers' compensation insurance contracts on behalf of the fund;

(3) prepare rate schedules for consideration and approval by the board;

(4) issue renewals of workers' compensation insurance for those who qualify for renewal;

(5) process and, with the approval of the board, pay valid claims;

(6) collect premiums for workers' compensation insurance issued or renewed by the fund; and

(7) collect and compile statistical data relating to the fund and provide this information to the board.

(d) In addition to any other authority provided by this article or by the board, the fund manager may:

(1) have inspected and audited the employers that apply to the fund for issuance of workers' compensation insurance or who are seeking renewal of that insurance;

(2) purchase reinsurance;

(3) with the approval of the board, cancel or refuse to renew workers' compensation insurance as provided by the board's rules;

(4) with the approval of the board, enter into contracts other than workers' compensation insurance contracts on behalf of the fund;

(5) draft guidelines for approval of the board relating to the settlement of claims against the fund; and

(6) perform any other acts authorized by the board to carry out this article and the rules of the board.

Sec. 6. OFFICE. The principal office of the fund must be maintained in Austin, Texas.

Sec. 7. EMPLOYEES AND OTHER PERSONNEL. (a) The fund manager may employ or contract with persons necessary to assist the board and the fund manager in carrying out the powers and duties under this article.

(b) Employees of the fund shall be compensated as provided by legislative appropriation.

(c) Contracts with persons under this section must be approved by the board.

Sec. 8. BOND. (a) Each member of the board and the fund manager shall execute a bond in an amount determined by the board, payable to the fund, and conditioned on the faithful performance of the member's or fund manager's duties or responsibilities under this article and rules of the board.

(b) The board may require any employee or person with whom the board contracts under Section 7 of this article to execute a bond in an amount determined by the board, payable to the board, and conditioned on the faithful performance of the employee's or person's duties and responsibilities under this article and rules of the board.

(c) The fund shall pay the cost of bonds under this section.

Sec. 9. INSURANCE FUND. (a) The workers' compensation insurance fund is created.

(b) The insurance fund is composed of:

(1) premiums paid by employers for workers' compensation insurance from the fund;

(2) money received by the fund to cover the initial expenses of the fund;

(3) investments and money earned from investments of the insurance fund; and

(4) any other money received by the fund.

(c) Administrative expenses of the fund shall be paid from the insurance fund at the direction of the board, but payments for this purpose during any fiscal year for the fund may not exceed one percent of the total amount of the money in the insurance fund during that fiscal year.

(d) The insurance fund is outside the state treasury and is held in trust by the state treasurer as custodian for the fund.

(e) Money in the insurance fund shall be paid from the fund without legislative appropriation on vouchers approved by the board.

(f) Money in the insurance fund shall be invested by the state treasurer on behalf of the fund in the types of investments authorized by law for investment of state funds.

Sec. 10. ACCOUNTING AND AUDIT. (a) The state treasurer shall make periodic reports to the board and the fund manager with regard to the status of the insurance fund and its investments.

(b) The state auditor shall audit the fund and the insurance fund annually not later than the 60th day after the date on which the fund's fiscal year ends.

Sec. 11. ESTABLISHING RATES. Subject to other provisions of this article, the board shall establish the rates to be charged by the fund for workers' compensation insurance issued by the fund. The rates shall be set with due regard to the physical hazards of each industry, occupation, or employment.

Sec. 12. ELEMENTS CONSIDERED IN SETTING RATES WITHIN CLASSES. (a) Within each class of business insured, the rate shall be set as far as practicable in accordance with the following elements:

(1) bodily risk or safety or other hazard of the plant, premises, or work of each insured employer;

(2) the manner in which the work is conducted;

(3) a reasonable regard for the accident experience and history of each insured; and

(4) a reasonable regard for the insured's means and methods of caring for injured persons.

(b) In setting the rates, the board may not take into account the extent to which the employees in a particular establishment have persons dependent on them for support.

Sec. 13. RATE BASIS. (a) The rates set by the board shall be that percentage of the payroll of an employer that, in the future and on the average, will produce a sufficient amount, when invested, to:

(1) carry all claims to maturity;

(2) meet the reasonable expenses of conducting the business of the fund; and

(3) produce a reasonable surplus to cover the catastrophe hazard.

(b) Rates shall be based on the reserve and not on the assessment plan.

Sec. 14. APPLICATION OF OTHER INSURANCE CODE PROVISIONS TO RATES. The provisions of Subchapter D of this chapter relating to the promulgation and use of rates for workers' compensation insurance do not apply to workers' compensation insurance issued by the fund.

Sec. 15. POLICY FORMS. The fund shall use the uniform policy and standard policy forms prescribed by the State Board of Insurance under Articles 5.56 and 5.57 of this code.

Sec. 16. CANCELLATION AND NONRENEWAL. (a) Except as provided by Subsection (b) of this section, the fund may cancel or refuse to renew the coverage of an employer that fails to comply with the fund's underwriting standards.

(b) The fund may not cancel the coverage of an employer insured by the fund after the first 60 days of the policy term except for fraud or nonpayment of premium.

(c) The board by rule shall adopt procedures for giving reasonable notice of cancellation and nonrenewal.

Sec. 17. ANNUAL REPORT. Not later than the 30th day after the date on which the fund's fiscal year ends, the board shall publish a report discussing the fund's activities and fiscal situation for the immediately preceding fiscal year.

Sec. 18. EXAMINATION OF FUND AND INSURANCE FUND. (a) The State Board of Insurance shall make an examination of the fund in the manner and under the conditions provided by Articles 1.15 through 1.19 of this code for insurers.

(b) The board shall pay for the examination from the insurance fund.

Sec. 19. ASSISTANCE OF INSURANCE BOARD. On request of the board, the State Board of Insurance shall provide any technical assistance necessary for the board and the fund manager to carry out this article.

Sec. 20. SHORTAGE OF AVAILABLE MONEY. If money in the fund will be exhausted by payment of claims during the fiscal year, the board shall levy an assessment against each employer purchasing workers' compensation insurance from the fund in an amount sufficient to pay those claims. The amount of assessment against each employer shall be in an amount that is equal to the ratio of the total premium paid by the employer for coverage from the fund during the fiscal year to the total premiums paid by all employers for coverage from the fund during the fiscal year.

Sec. 21. JURISDICTION OF INSURANCE BOARD; APPLICATION OF INSURANCE CODE. Except as specifically provided by this article, the State Board of Insurance has no jurisdiction over the fund, and this code and other insurance laws of this state do not apply to the fund.

SECTION 2. (a) In addition to amounts previously appropriated for the current fiscal year, the sum of \$60,000 is appropriated for the period ending August 31, 1990, from the general revenue fund to the Texas Workers' Compensation Insurance Fund Board for the creation and operation of the Texas workers' compensation insurance fund.



(b) In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$200,000 is appropriated for the fiscal year ending August 31, 1991, from the general revenue fund to the Texas Workers' Compensation Insurance Fund Board for the operation of the Texas workers' compensation insurance fund.

(c) From the first money paid into the Texas workers' compensation insurance fund, the Texas Workers' Compensation Insurance Fund Board shall reimburse the state for money paid from the general revenue fund under Subsections (a) and (b) of this section to fund the creation and operation of that fund. The comptroller shall deposit in the general revenue fund any amounts paid as reimbursement under this section, and may adopt any rules and forms necessary to carry out this subsection.

SECTION 3. This Act takes effect June 1, 1990.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Montford, the amendment was tabled by the following vote: Yeas 16, Nays 15.

Yeas: Armbrister, Bivins, Brooks, Brown, Glasgow, Haley, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Santiesteban, Sims, Tejeda.

Nays: Barrientos, Caperton, Carriker, Dickson, Edwards, Green, Johnson, Lyon, Parker, Parmer, Truan, Uribe, Washington, Whitmire, Zaffirini.

Senator Parker offered the following amendment to the bill:

**Floor Amendment No. 41**

Amend S.B. 1 as follows:

Amend Article 13, page 202, line 16 by striking "9 and" and substituting "5 through".

The amendment was read and was adopted viva voce vote.

Senator Dickson offered the following amendment to the bill:

**Floor Amendment No. 42**

Amend S.B. 1, Article 3, Section 3.05 (d) on page 36 by adding the following sentence after the sentence ending on line 24:

"No employee of such a subcontractor shall be considered an employee of the general contractor for the purpose of any third party action by said employee or his beneficiary against said general contractor.

The amendment was read.

On motion of Senator Dickson and by unanimous consent, the amendment was withdrawn.

Senator Krier offered the following amendment to the bill:

**Floor Amendment No. 43**

Amend S.B. 1 as follows:

- (1) Renumber SECTION 3.06 as Subsection (k) of SECTION 3.05.
- (2) Add a new SECTION 3.06 to read as follows:

**"SECTION 3.06. APPLICATION TO CERTAIN BUILDING AND CONSTRUCTION WORKERS.**

(a) This Section applies only to contractors and workers preparing to construct, constructing, altering, repairing, extending or demolishing residential structures, or commercial structures not exceeding three (3) stories or 20,000 square feet, or an appurtenance to such a structure.

(b) In this section:

(1) "Hiring contractor" means a general contractor or subcontractor who, in the course of his regular business, subcontracts part or all of the work to others.

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job, not by the hour or on some other time-measured basis;

(B) is free to hire as many helpers as he desires and to determine what each helper will be paid; and

(C) is free to work for other contractors, or to send helpers to work for other contractors, while under contract to the hiring employer.

(c) An employer in building or construction, whether a general contractor or a subcontractor, shall obtain workers' compensation insurance coverage for all employees of that employer beginning the effective date of this Act. A hiring contractor has no obligation to provide workers' compensation insurance for an independent contractor or to an independent contractor's employee, helper or subcontractor. An independent contractor shall provide workers' compensation insurance coverage for the employees of that independent contractor.

(d) An independent contractor and the hiring contractor may voluntarily enter into a written agreement whereby the independent contractor agrees that the hiring contractor may withhold the cost of workers' compensation insurance from the contract price and that, for the purpose of providing workers' compensation insurance, the hiring contractor will be the employer of the independent contractor and the independent contractor's employees. The hiring contractor and independent contractor may enter into such an agreement even if the independent contractor is a sole proprietor with no employees. Absent an agreement as provided for by this subsection, the hiring contractor is not responsible for providing workers' compensation to any independent contractor or to any independent contractor's employee, helper or subcontractor. The agreement shall be filed with the Commission by personal delivery or registered or certified mail. The agreement is deemed filed upon receipt by the Commission. The hiring contractor shall send a copy of the joint agreement to the insurer of the hiring contractor when the agreement is filed with the Commission. The agreement makes the hiring contractor the employer of the independent contractor and the independent contractor's employees only for the purposes of workers' compensation laws of this state and for no other purposes. The deduction of the cost of the coverage from the independent contractor's contract price is permitted notwithstanding Section 10.03 of this Act.

(e) The Texas Workers' Compensation Commission shall establish and administer a program to ensure that hiring contractors and independent contractors meet their obligations to provide workers' compensation to their respective employees.

(1) The Commission shall establish a system to ensure that hiring contractors and independent contractors procure and maintain workers' compensation insurance for their respective employees.

(2) (A) The Commission shall promulgate forms whereby hiring contractors and independent subcontractors enter into a joint agreement stating that the subcontractor is an independent contractor meeting the qualifications in

Subsection (b) and that the subcontractor is not an employee of the hiring contractor. If the statement is signed by both the hiring contractor and the subcontractor, and is filed with the Commission in the records maintained for that purpose, the subcontractor shall, as a matter of law, be an independent contractor, not an employee of the hiring contractor for purposes of workers' compensation and shall not, absent a written agreement as described under Subsection (d), be entitled to workers' compensation coverage from the hiring contractor. The independent contractor shall be responsible for providing workers' compensation for the independent contractor's employees, and, absent an agreement as described under Subsection (d), the independent contractor's employees shall not be entitled to workers' compensation coverage from the hiring contractor. An independent contractor who has no employees shall be treated like any other independent contractor and is not entitled to coverage under the hiring contractor's workers' compensation insurance policy, except under an agreement made pursuant to Subsection (d). Upon acquiring employees, an independent contractor who had no employees shall obtain workers' compensation insurance coverage for the employees. The joint statement shall be delivered to the Commission by personal delivery or registered or certified mail and deemed filed on receipt by the Commission. The hiring contractor shall send a copy of the joint agreement to the hiring contractor's insurer when the joint agreement is filed with the Commission.

(B) The Commission shall set up a system for accepting and maintaining the joint statements of hiring contractors and the independent contractors.

(f) It is a violation of this Act for any hiring contractor to wrongfully induce an employee to enter into a joint statement pursuant to Subsection (e) stating that the employee is an independent contractor, and for any hiring contractor to exert controls over an independent contractor, or an employee of an independent contractor, sufficient to make that person an employee under common law tests. A hiring contractor shall not be considered to have exerted employer-like controls over an independent contractor or an independent contractor's employee by reason of:

(A) controlling the hours of labor if such control is exercised solely for the purposes of:

(i) establishing the deadline for completion of the work called for by the contract;

(ii) scheduling work to occur in a logical sequence and to avoid delays or interference with the work of other contractors; or

(iii) scheduling work to avoid disturbing neighbors during night or early morning hours, or at other times when the independent contractor's activities would unreasonably disturb activities in the neighborhood; or

(B) stopping or directing work solely for the purpose of:

(i) preventing or correcting an unsafe work practice or condition; or

(ii) controlling work solely for the purpose of ensuring that the end product is in conformity with the contracted for result.

(g) Except pursuant to an agreement made in compliance with Subsection (d), an insurance company may not require insurance premiums from a hiring contractor for coverage for an independent contractor, or an independent contractor's employee, helper, or subcontractor if the hiring contractor and independent contractor have filed a joint statement pursuant to Subsection (e) with the Commission.

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to the bill:

**Floor Amendment No. 44**

Amend **S.B. 1** Section 6.41(a) by inserting on page 13 line 14 after the word "beneficiary" the phrase "that the insurance carrier does not consent to arbitration. The parties shall then proceed to the Contested Case Hearing scheduled pursuant to Section 6.12(b)."

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to the bill:

**Floor Amendment No. 45**

Amend **S.B. 1**, Article 1, as follows:

by amending (a) (2) of Sec. 1.02 by deleting "appeals panel proceedings" and substituting "arbitration conferences,"

by deleting (18) of Sec. 1.03 and substituting in lieu thereof the following:  
(18) "Disability" means the inability to return to the employment in which the employee was engaged when injured."

by deleting (26) of Sec. 1.03 and substituting in lieu thereof the following:  
"(26) "Impairment" means an anatomic or functional loss existing after the employee's medical condition, resulting from a compensable injury, has stabilized."

by deleting (34) of Sec. 1.03 and renumbering accordingly.

The amendment was read and was adopted viva voce vote.

Senator Brooks offered the following amendment to the bill:

**Floor Amendment No. 46**

Amend **S.B. 1** as follows:

(1) On page 5, line 1, strike subsection (19) in its entirety and insert the following:

"(19) "Doctor" means a doctor of medicine, a doctor of osteopathic medicine or a doctor of chiropractic who is licensed and authorized to practice. Doctors shall perform only those procedures which are within the scope of the practice for which they are licensed."

(2) On page 6, line 8, after "nursing", insert "occupational therapy"

(3) On page 87, line 10, after "may", strike "select one alternate doctor", and insert "change doctors once".

(4) On page 87, line 13, after "doctor", strike "selected", and insert "change".

(5) On page 87, line 23, strike subsection (c) in its entirety and insert the following:

"(c) If the employee is dissatisfied with the doctor from the commission's list, the employee may change doctors once on submission to the commission in writing of the reasons for the employee's change in doctors. A third or subsequent doctor change by the employee is subject to the approval of the insurance carrier or the commission."

(6) On page 91, SECTION 4.70, strike subsection (b) and substitute the following:

"(b) A health care practitioner providing care to an employee under this chapter shall prescribe for the employee prescription drugs in accordance with applicable state law."

(7) On page 137, line 8, strike subsection (b) in its entirety and substitute the following:

“(b) The medical advisory committee is composed of 13 members appointed by the commission as provided by this section. Each member of the committee must be knowledgeable and qualified regarding work-related injuries and diseases. The advisory committee shall include each of the following:

- (1) a representative of a public health care facility
- (2) a representative of a private health care facility
- (3) a doctor of medicine;
- (4) a doctor of osteopathic medicine;
- (5) a doctor of chiropractic;
- (6) a physical therapist;
- (7) a dentist;
- (8) a pharmacist; and
- (9) an occupational therapist.”

BROOKS  
LYON  
GREEN

The amendment was read.

Senator Green offered the following amendment to Floor Amendment No. 46:

**Floor Amendment No. 47**

Amend Floor Amendment No. 46 to **S.B. 1** as follows:

(1) On page one of the amendment, line 6, after the words “osteopathic medicine,” insert “a doctor of podiatry, a doctor of dentistry,”.

(2) On page two of the amendment, in subsection (7)(b), amend numbers (8) and (9) and add (10), (11), and (12) to read as follows:

- (8) a pharmacist;
- (9) an occupational therapist;
- (10) a registered nurse;
- (11) a podiatrist; and
- (12) a psychologist.

GREEN  
HENDERSON

The amendment was read and was adopted viva voce vote.

Question recurring on the adoption of Floor Amendment No. 46 as amended, the amendment was adopted viva voce vote.

Senator Dickson offered the following amendment to the bill:

**Floor Amendment No. 48**

(1) Amend **S.B. 1**, Article 3, Section 3.05 (d) on page 36 by adding the following sentence after the sentence ending on line 24:

“No employee of such a subcontractor shall be considered an employee of the general contractor for the purpose of any third party action by said employee or his beneficiary against said general contractor.”

The amendment was read.

(Senator Brooks in Chair)

Senator Glasgow moved to table the amendment.

(President in Chair)

The motion to table was lost by the following vote: Yeas 15, Nays 16.

Yeas: Armbrister, Bivins, Brown, Glasgow, Green, Haley, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Sims, Tejeda.

Nays: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Johnson, Lyon, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Question recurring on the adoption of the amendment, the amendment was adopted viva voce vote.

#### RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the adoption of the amendment.

Senator Barrientos offered the following amendment to the bill:

##### Floor Amendment No. 49

Amend S.B. 1 on page 2, by deleting Subsection (b) and substituting the following:

(b) The Texas Sunset Act (Chapter 325, Government Code) applies to the Texas Workers' Compensation Commission. Unless continued in existence as provided by that chapter, the commission and the research center are abolished September 1, 1995.

BARRIENTOS  
GREEN

The amendment was read and was adopted by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Montford, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Lyon, McFarland.

Senator Caperton offered the following amendment to the bill:

##### Floor Amendment No. 50

Amend S.B. 1, Article 6, as follows:

On page 20 strike lines 19 through 21.

The amendment was read.

On motion of Senator Caperton and by unanimous consent, the amendment was withdrawn.

Senator Green offered the following amendment to the bill:

##### Floor Amendment No. 51

Amend S.B. 1 by adding the following:

Sec. 15.12 (e) This Act takes effect only if the Texas Workers' Compensation Insurance Reform Act, Senate Bill No. 2, Acts of the 71st Legislature, 2nd Called

Session, 1989, is enacted, signed by the Governor and becomes law. If that Act is not enacted, this Act shall have no effect.

GREEN  
CAPERTON

The amendment was read and was adopted by the following vote: Yeas 17, Nays 14.

Yeas: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Green, Johnson, Lyon, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Glasgow, Haley, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Sims, Tejada.

**VOTE ON ADOPTION OF FLOOR  
AMENDMENT NO. 45 RECONSIDERED**

On motion of Senator Caperton and by unanimous consent, the vote by which Floor Amendment No. 45 was adopted was reconsidered.

Question - Shall Floor Amendment No. 45 be adopted?

Senator Caperton offered the following amendment as a substitute for Floor Amendment No. 45 as previously adopted:

**Floor Amendment No. 52**

Amend S.B. 1, Article 1, as follows:

by amending (a)(2) of Sec. 1.02 by deleting "appeals panel proceedings" and substituting "arbitration conferences,"

by deleting (18) of Sec. 1.03 and renumbering accordingly; and

by deleting (26) of Sec. 1.03 and substituting in lieu thereof the following:

"(26) "Impairment" means an anatomic or functional loss existing after the employee's medical condition, resulting from a compensable injury, has stabilized." by deleting (34) of Sec. 1.03 and renumbering accordingly.

The substitute amendment was read and was adopted viva voce vote.

**VOTE TO TABLE FLOOR AMENDMENT  
NO. 40 RECONSIDERED**

On motion of Senator Brooks, the vote to table Floor Amendment No. 40 was reconsidered by the following vote: Yeas 17, Nays 14.

Yeas: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Green, Johnson, Lyon, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Glasgow, Haley, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Sims, Tejada.

Question - Shall Floor Amendment No. 40 be tabled?

The motion to table Floor Amendment No. 40 was lost by the following vote: Yeas 13, Nays 18.

Yeas: Armbrister, Bivins, Brown, Glasgow, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Sims, Tejada.

Nays: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Green, Haley, Johnson, Lyon, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire, Zaffirini.

Question recurring on the adoption of Floor Amendment No. 40, the amendment was adopted viva voce vote.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

#### **RECORD OF VOTES**

Senators Glasgow, Ratliff, Henderson, Harris, Bivins, Sims, Montford, Krier and Brown asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

#### **MEMORIAL RESOLUTIONS**

**S.C.R. 15** - By McFarland: In memory of Paul Earl Yarbrough.

**S.R. 44** - By Armbrister: In memory of Bert Edwin Brown of Raymondville.

**S.R. 45** - By Glasgow: In memory of Morris S. Neal of Cleburne.

**S.R. 46** - By Glasgow: In memory of Darrell R. Dunham of Denton.

**S.R. 47** - By Glasgow: In memory of Albert M. Biggs of Weatherford.

**S.R. 48** - By Glasgow: In memory of Johnnie Stubbs of White Settlement.

**S.R. 49** - By Glasgow: In memory of Dallas E. Thompson of Stephenville.

#### **WELCOME AND CONGRATULATORY RESOLUTIONS**

**H.C.R. 2** - (Brooks): Commending the members of Channel Industries Mutual Aid Organization for their assistance in the tragic Phillips Petroleum Company accident.

**H.C.R. 6** - (Barrientos): Commending Susan Pitman for her efforts to educate the public on the hazards associated with low-level chemical exposure to the human body.

**H.C.R. 7** - (Brooks): Honoring Rita Carlson for her untiring efforts in the cause of a cleaner, healthier and more beautiful environment.

**H.C.R. 8** - (Brooks): Honoring Bebe Lising for her efforts in the cause of a cleaner, healthier environment and her dedication to the preservation of our precious natural heritage.

**S.C.R. 13** - By Sims: Extending congratulations to John H. Reagan Elementary School of San Angelo on the occasion of its 80th anniversary and commending all those associated with the school on their commitment to excellence in education.

**S.C.R. 14** - By Sims: Commending Texaco Chemical Company and its Austin Research Laboratories for attaining the prestigious status of an OSHA STAR work site by placing as the highest priority a safe workplace environment.

**S.R. 50** - By Barrientos: Extending congratulations to Mr. and Mrs. Nicholas Rangel of Austin on their 50th wedding anniversary.

**S.R. 51** - By Barrientos: Recognizing Dr. Billye J. Brown for her superior accomplishments as dean of the School of Nursing at The University of Texas at Austin.

**S.R. 52** - By Washington: Commending all those responsible for the opening of the Charles R. Drew Medical Center.



**S.R. 53** - By Barrientos: Extending congratulations to Cub Scout Pack 9 on 50 years of developing good citizenship, sportsmanship and respect for others.

**S.R. 54** - By Truan: Extending welcome to Dr. John McCollough of Corpus Christi, Capitol Physician for the Day.

**S.R. 55** - By Glasgow: Extending welcome to the honor government students from Boyd High School and their teacher, Charlotte Todd.

**S.R. 56** - By Truan: Commending Johnny Bailey for his determination and skill in becoming the preeminent running back in NCAA Division II history.

#### ADJOURNMENT

On motion of Senator Brooks, the Senate at 11:48 p.m. adjourned until 10:00 a.m. tomorrow.

#### SECOND DAY

(Tuesday, November 21, 1989)

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

A quorum was announced present.

The Reverend Henry Biar of King of Kings Lutheran Church, San Antonio, offered the invocation as follows:

Heavenly Father, in prayer we come to You as we approach Thanksgiving. We come to You in thanks for Your many blessings of this past year.

We thank You for these people whom You have given to represent this State's people.

We come to You this morning as these people seek to help many in our State.

We ask that You will guide and direct their hearts and minds to do what is right and good to deal with the workers' compensation bill in an honest and moral way, not selfishly, to personal interests but that which will do the highest good for all people.

Your will be done in Jesus' name. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

#### SENATE BILLS AND RESOLUTION ON FIRST READING

The following bills and resolution were introduced and read first time:

**S.C.R. 12** by Brooks

Granting the City of Pasadena of Harris County permission to sue the State of Texas and the General Land Office.